

**DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES**

**CHAPTER 34**

**DEVELOPMENTAL DISABILITIES PROGRAM**

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## Subchapter 1

## General Requirements

**37. 34. 101 PURPOSE OF THE DEVELOPMENTAL DISABILITIES PROGRAM** (1) The purpose of the developmental disabilities program is to provide quality community-based services in the least restrictive environment which promotes the principle of normalization for citizens who are developmentally disabled. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1979 MAR p. 1708, Eff. 12/28/79; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 102 DEFINITIONS** For purposes of this chapter, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103, MCA constitutes lawful authority.

(2) "Accreditation organization" means an organization recognized by rule which establishes and publishes standards relating to the quality of services provided by contractors of services to persons with a developmental disability, analyzes compliance with those standards and accredits contractors based on those standards.

(3) "Accredited program" means a program recognized and accredited, as provided in ARM 37. 34. 1801, et seq., by either the accreditation council on services for people with disabilities (AC) or by the commission on accreditation of rehabilitation facilities (CARF) for academic and professional preparation program.

(4) "Accreditation report" means a report produced after a survey of a contractor by an accreditation organization which states the extent of the contractor's compliance with the standards of the accreditation organization and presents the determination of the accreditation organization as to whether the contractor is accredited.

(5) "Advocate" means a person who:

(a) represents the interests and rights of a person receiving services consistent with the person's interests;

(b) is not an employee of any agency directly providing services to the person receiving services; and

(c) who is acknowledged by the person receiving services to be the person's advocate currently.

(6) "Applicant" means a person who applies for services, but is not yet accepted into a service program.

(7) "Board" means 3 meals a day or any other full nutritional regimen. A meal furnished as part of an adult day care program is not considered board.

(8) "Case manager" means the person, employed by either a contractor or the division, who assesses individual service needs, assists individuals to access services, coordinates the planning process, monitors services delivered, and provides crisis management.

(9) "Client, individual, or recipient" means a person with a developmental disability who is receiving developmental disabilities services.

(10) "Contract" means any contractual agreement, inclusive of appendices and other duly incorporated writings, for the delivery of services to persons with developmental disabilities entered into by the department with the contractor.

(11) "Contractor" or "provider" means any person or entity providing developmental disabilities services to persons with developmental disabilities through a contract with the department.

(12) "Developmental disabilities services" means the state program of services for persons with developmental disabilities managed through the developmental disabilities program of the department.

(13) "Person with a developmental disability" or "developmentally disabled person" means a person who has a developmental disability as defined in 53-20-202(3), MCA.

(14) "Direct care staff" means a person employed by a contractor in a position the duties of which focus on the hands on delivery of services to persons with developmental disabilities or to their families or both. Direct care tasks include: monitoring and delivering basic life and health care needs, implementing programs, intervening when maladaptive behaviors occur, recording progress toward meeting goals and objectives, documenting incidents, and sharing information with supervisory staff or other professionals according to the policies and procedures of the contractor. In outreach services, direct care tasks may include conducting home visits and providing specialized instruction to family members in the implementation of programs to meet individual needs.

(15) "Program" means the developmental disabilities program of the department of public health and human services.

(16) "Emergency response system" means a system which can be efficiently operated by staff or where appropriate, individuals, that ensures the safety of the people in the home or the facility in an emergency. The system includes well-rehearsed emergency procedures for the people living and working in the facility. The system includes, in addition to emergency response measures, a reliable means of communicating with on-call staff and other people who are available in the event of an emergency. The means of communication may include an immediate electronic access to ambulance, fire department, medical staff, police and other staff within the corporation.

(17) "Evaluation" means a process for making determinations regarding whether disabling conditions are present, determining individual needs and making specific recommendations or selecting treatment alternatives to address those needs.

(18) "Exploitation" means the unreasonable use of an older person or a person with a developmental disability, the person's money or the person's property to the advantage of another by means of duress, menace, fraud or undue influence.

(19) "Family" means natural parents, adoptive parents, foster parents, grandparents, guardians, stepparents, or others with whom a child lives and non-custodial parents and other persons who are legally responsible for the child's welfare.

(20) "Field services specialist" means a person employed by the division in a field-based position to assist corporations in the delivery of services.

(21) "Habilitation" means the process to assist a person with developmental disabilities in acquiring and maintaining those life skills which enable the person to cope more effectively with the demands of the environment and to improve physical, mental and social efficiency. Habilitation includes, but is not limited to, formal structured education and treatment.

(22) "Incidents" means significant events, acts or omissions not otherwise permitted which result or may result in physical or emotional harm to an individual or which intentionally deprive an individual of acknowledged rights, including, but not limited to:

- (a) death;
- (b) harm or illness requiring hospitalization;
- (c) complaints or illness of an extended nature;
- (d) harm of a staff member due to actions of an individual;
- (e) suicide attempts;
- (f) a substantial change in residential or work placement without approval of the individual planning team;

(g) alleged unlawful activities by or affecting an individual;

(h) abuse, exploitation, neglect or sexual abuse;

(i) rights violations;

(j) an unaccounted for absence;

(k) significant property damage; or

(l) any behavior requiring the use of an emergency procedure as provided for in ARM 37.34.1401 et seq.

(23) "Individual plan" means a written plan identifying the supports and services that are necessary to achieve independence, dignity, and personal fulfillment, developed for a person with developmental disabilities by the individual planning team on the basis of a skill assessment and determination of the strengths and needs of the individual.

(24) "Individual planning team" means an interdisciplinary team composed of those persons specified in ARM 37.34.1107 that identifies and evaluates the needs of an individual receiving services, develops an individual plan to meet those needs, periodically reviews the individual's response to the plan and revises the plan accordingly.

(25) "Individual program plan" means the written strategy for meeting an objective of an individual plan.

(26) "Integrated/inclusive community activities" means enjoyable activities that provide an individual with opportunities to participate with other members of the community.

(27) "Leisure activities" means enjoyable recreational and other activities in which an individual may actively participate.

(28) "Life management" means obtaining services, assistance or information necessary for an individual to undertake the everyday tasks of life. Examples of these tasks include making medical appointments, maintaining financial arrangements with government agencies for SSI payments or food stamps, banks for saving or checking accounts, developing a budget, balancing a checkbook, completing income tax forms, paying bills, going to the barber or beauty shop, getting a bicycle repaired, etc.

(29) "Neglect" means the failure of a guardian; an employee of a public or private residential institution, facility, home or agency; or any person legally responsible in a residential setting for the welfare of an older person or a person with a developmental disability to provide, to the extent of legal responsibility, food, shelter, clothing or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(30) "Organized health care delivery systems" means an organized system of health care delivery which allows for both the direct provision of health care services as well as contracting with other qualified providers to furnish services required by an individual's plan of care.

(31) "Portability" means providing for contract funds used to support the individual in the current placement to be transferred to a new service contractor when an individual receiving services moves to another geographical area of the state or obtains services from another qualified provider contract.

(32) "Positive programming" means the application of a variety of behavior modification procedures and techniques to change undesirable behaviors, with an emphasis on minimizing the use of punishers and aversive programming.

(33) "Regional manager" means a person employed by the developmental disabilities program in one of five field-based supervisory positions.

(34) "Room" means shelter type expenses including all property related costs such as rental or purchase of real estate and furnishings, maintenance, utilities and related administrative services.

(35) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct or incest, as described in Title 45, chapter 5, part 5, MCA.

(36) "Standards" means criteria developed by various sources and used by the department for the purpose of judging the adequacy of the quality and extent of service provided by providers to persons with developmental disabilities.

(37) "Survey" means a review of the contractor's services by an accreditation organization for the purposes of determining the extent of compliance with the standards of the accreditation organization and for accrediting the contractor's services. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, 53-20-204 and 53-20-205, MCA; NEW, 1979 MAR p. 1708, Eff. 12/28/79; AMD, 1981 MAR p. 628, Eff. 6/26/81; AMD, 1985 MAR p. 1156, Eff. 8/16/85; AMD, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1988 MAR p. 1007, Eff. 5/27/88; AMD, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 and 04 reserved

**37.34.105 EVALUATION SERVICES** (1) The division shall provide for the evaluation of any person eligible for diagnostic and evaluation services either through services funded by the department or by referral to another agency.

(2) Within 30 calendar days of the enrollment of a developmentally disabled person in a provider service program, with the exception of respite and transportation services, the provider shall perform a comprehensive skill assessment for that person. Each assessment shall be reviewed annually by the provider. Results of the assessment shall be provided to the client's individual habilitation planning team, including the individual receiving services. (History: Sec. 53-20-203, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1979 MAR p. 1710, Eff. 12/28/79; AMD, 1988 MAR p. 1007, Eff. 5/27/88; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 06 and 07 reserved



**37. 34. 108 CONFIDENTIALITY OF INFORMATION**

(1) Confidential information, for purposes of this chapter, includes the following information about any applicant or client:

- (a) name, address, and phone number;
- (b) the amount or type of services provided;
- (c) information related to the social and economic conditions or circumstances;
- (d) agency evaluation of information;
- (e) medical data, including diagnosis, treatment, and past history of disease or disability;
- (f) educational, training, habilitation or any similar data;
- (g) any of the above information pertaining to the immediate family members.

(2) The department and the provider shall not disclose confidential information concerning any applicant or client except to department staff and providers who assist in eligibility determination, referral or the provision of services to the applicant or client.

(3) Information, as specified, may be disclosed upon the written consent of:

- (a) the applicant or client if a legally competent adult; or
- (b) the client's parents, if legally responsible for the applicant or client, or the legal guardian of the applicant or client.

(4) Information may be disclosed if it is in summary, statistical, or any other form which does not identify and cannot be used to identify any applicant or client.

(5) Information may be disclosed pursuant to a court order issued by a court of competent jurisdiction, to the extent required by the court order.

(6) Information may be disclosed to the extent required to take immediate life-saving measures.

(7) Information may be disclosed to the extent required by federal or state law.

(8) The provisions of the department's confidentiality policy, except where contrary to a specific provision of this rule, provide the standards for the protection, management and release of confidential information. The department's confidentiality policy, adopted October 1, 1988, and published in the Department of Social and Rehabilitation Services Policy Manual ADM 102 is hereby adopted and incorporated by reference. Copies of the policy may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P. O. Box 4210, Helena, MT 59604-4210. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-204 and 53-20-205, MCA; NEW, 1979 MAR p. 1710, Eff. 12/28/79; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 109 CLIENT GRIEVANCE PROCEDURE (1) A provider shall maintain a written grievance procedure by which a client may file a complaint. A current copy of such procedure must be approved by the department.

(2) Upon entry into a program and at least every 6 months thereafter, a client must be advised by the provider of the right to present grievances. The provider shall assist clients, as may be necessary, in utilizing the grievance procedure.

(3) If the outcome of the grievance procedure is adverse to a client, the provider shall notify the person of his or her right to appeal to the department under the department's fair hearing procedure. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1979 MAR p. 1711, Eff. 12/28/79; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 10 through 13 reserved

**37.34.114 CERTIFICATION OF PERSONS ASSISTING IN THE ADMINISTRATION OF MEDICATION** (1) This rule establishes criteria and procedures under which an employee or an agent of a contractor may assist and supervise an individual in taking medication. Assistance and supervision may only be given where a medication which is normally self-administered has been prescribed for an individual and where the physician who prescribed the medication also prescribed assistance or supervision in the administration of the medication.

(2) For the purposes of this rule, the following definitions apply:

(a) "Assistance" means providing any degree of support or aid to an individual who independently performs at least one component of medication-taking behavior; and

(b) "Supervision" means critically observing and directing an individual engaged in medication-taking behavior.

(3) An agent or employee of a contractor in order to assist or supervise in the administration of medication to individuals, must be certified by the department as herein provided unless the agent or employee is otherwise authorized by law to provide such assistance or supervision.

(4) To be certified, an employee or agent of a contractor must demonstrate knowledge of seizure disorders and of the use and side effects of medications by achieving a score of at least 90% on a comprehensive test administered by the department.

(5) Application for certification to provide supervision and assistance in the administration of medication is made by providing notification to the Department of Public Health and Human Services, Developmental Disabilities Program, P. O. Box 4210, Helena, MT 59604.

(6) Any contractor may receive, free of charge, an instructional and reference aid entitled Seizure Disorders and Medications, a self-paced instructional manual.

(7) The department administers the comprehensive test to a qualified applicant within 30 days of receipt of the notification of application for certification.

(8) Notice of certification or noncertification is mailed within 10 days of the date of testing. The notice designates an effective date and an expiration date for the certification. Certification is approved for a maximum of 2 years.

(9) A person may receive consecutive certification by retaking the test as provided in (4) through (7).

(10) Every contractor shall maintain a current list of contractor employees and agents certified to supervise and assist in the administration of medication.

(11) If an individual has been receiving developmental disabilities services for 30 days and supervision and assistance is to be administered for more than 10 consecutive days, this activity must be included as an objective in the written individual plan. To address the objective, an individual program plan must be prepared which describes a program to train the individual to self-administer the medication and must specify at least:

- (a) the target medication-taking behavior;
- (b) the conditions under which such behavior should occur;
- (c) the conditions under which such behavior will be trained;
- (d) the criterion for completion of the individual program plan in accordance with (13) herein;
- (e) the written strategies for training the target behavior;
- (f) a data recording system which accounts for each prescribed medication dosage; and
- (g) a daily data recording system which specifies progress or lack of progress toward the target behavior.

(12) Every instance of assistance or supervision provided under this rule must be recorded and must include at least the name of the person who receives medication, the name of the person who assists or supervises the taking of medication, the date and time the medication was taken, and the type of medication taken.

(13) An individual is considered to be capable of self-administering medication when it has been documented that the individual has self-administered all (100%) of prescribed medication dosages for a consecutive 30 day period.

(14) There are two conditions under which an individual program plan to teach self-administration of medication is no longer necessary. They are:

- (a) the individual has met the criterion specified in (13),  
or
- (b) the IP team has reviewed the ongoing implementation of the individual program plan and found that the individual has reached the maximum level of independence in the self-administration of medication of which the individual is currently capable. In making this decision, the team must evaluate whether:
  - (i) the individual has made any progress;
  - (ii) the program has been consistently implemented;

(iii) a variety of teaching strategies has been employed;  
(iv) the decision to discontinue the program will interfere with the individual's ability to be served in a less restrictive environment; and

(v) the program has been in place long enough to make a decision concerning its effectiveness.

(15) If the IP team decides that an individual program plan to teach self-administration of medication is no longer necessary, the requirements concerning the need for certified personnel and recording instances of assistance and supervision must be met.

(16) The feasibility of re-instituting a program to teach self-administration of medication must be examined at subsequent IP meetings by the team. If the individual's situation changes such that there is a possibility of further acquisition of the skill, a program is initiated.

(17) The department may revoke or suspend a certification.

(a) The department may revoke certification by notifying the certified person of the reason for revocation in writing at least 10 days prior to the effective date of revocation. The certified person may request, in writing, within the 10 days prior to revocation, a review by the division administrator. A decision is issued within 30 days from the date the request for review is received. When a request for a review is made, the revocation is not effective until the division administrator's decision is made.

(b) The department may suspend a certified person's right to assist or supervise in the administration of medication for a period no longer than 15 days, after which the suspension must be removed or notice of revocation issued. If notice of revocation is issued, suspension may continue until the effective date of revocation or until the division administrator's decision is made.

(History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-204, MCA; NEW, 1980 MAR p. 1803, Eff. 6/27/80; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

## Subchapter 2

## Eligibility

37.34.201 ELIGIBILITY: GENERAL ELIGIBILITY REQUIREMENTS

(1) A person, in order to be considered for placement into developmental disabilities services funded through the developmental disabilities program of the department, must be determined by the department in accordance with the criteria and procedures of these rules to be a person with a developmental disability as defined at 53-20-202(3), MCA.

(2) A child and the child's family, in order to be considered for placement into family education and support services funded through the developmental disabilities program of the department, must be determined by the department in accordance with the criteria and procedures of these rules to be a person with a developmental disability as defined at 53-20-202(2), MCA or a person with a developmental delay or potentially subject to developmental delay.

(3) A determination of eligibility, except for federally funded Part H family education and support services, does not entitle a person to placement into any developmental disabilities service.

(4) A person who is eligible to be considered for placement into developmental disabilities services may apply for services by following the placement determination procedures at ARM 37.34.301, et seq.

(5) Appropriate documentation of eligibility will be maintained by the department or a responsible contractor according to procedures established by the department.

(6) Application for determinations of eligibility and placement, except for family education and support services, are made through developmental disabilities case managers. Application for determinations of eligibility and placement for family education and support services are made through the family education and support services contractors. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 202 ELIGIBILITY: EVALUATION (1) Diagnostic and evaluation services to determine whether a person has a developmental disability, if not otherwise available to the person from other programs of services, are available to any person believed to have a developmental disability and to be in need of developmental disabilities services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

**37. 34. 206 ELIGIBILITY: STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES** (1) A person, along with the person's family, are eligible for state-funded family education and support services if the person is:

(a) a child from birth to 18 years of age with a developmental disability;

(b) a child from birth to 6 years of age who is at risk for a developmental delay who is residing in a family unit; or

(c) an adult from 18 to 22 years of age with a developmental disability who is not receiving adult services. (2) An adult who has a developmental disability and is residing in a natural, foster or adoptive home may receive limited services under state-funded family education and support services to the extent the department and the contractor determine is appropriate.

(3) Eligibility for state-funded family education and support services are determined by the contractor at the time of application for services to the contractor. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 207 ELIGIBILITY: FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES** (1) A child from birth to 3 years of age residing in a family unit, along with the child's family, are eligible for federally funded Part H family education and support services if the child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, even though the delay may not exist at the time of diagnosis, or the child is experiencing developmental delays in one or more of the areas listed in (1)(b).



(a) A diagnosed physical or mental condition that has a high probability of resulting in a developmental disability includes sensory impairments, inborn errors of metabolism, microcephaly, fetal alcohol syndrome, epilepsy, down's syndrome or other chromosomal abnormalities.

(b) A developmental delay includes delays in cognitive development, physical development, including vision and hearing, communication development, social or emotional development or adaptive development.

(c) The criteria to be used in determining a child's eligibility as a result of developmental delay include a minimum of a 50% delay in any one of the developmental areas listed in (1)(b) or a 25% delay in 2 or more of the developmental areas listed in (1)(b).

(2) Developmental delay must be measured by appropriate diagnostic instruments and procedures. Informed clinical opinion must be used in determining eligibility for services as a result of developmental delay if there are no standardized measures, or the standardized measures and procedures available are not appropriate for a given age or developmental level.

(3) Eligibility for federally funded Part H family education and support services is determined by the contractor at the time of application for services to the contractor. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 208 ELIGIBILITY: FEDERALLY FUNDED INTENSIVE FAMILY EDUCATION AND SUPPORT SERVICES** (1) A child from birth to 18 years of age or an adult less than 22 years of age is eligible for federally funded intensive family educational support services if the person has a developmental disability, has one or more of the characteristics in (2) and without intensive services, would be in jeopardy of placement in an ICF/MR due to the inability of the natural or foster family to maintain the child in the home without additional resources.

(2) Characteristics of persons with developmental disabilities in need of intensive services are:

(a) severe/profound mental retardation, including extreme deficiencies in self-care and daily living skills as compared to age peers;

(b) significant maladaptive social and/or interpersonal behavior patterns which require an ongoing supervised program of intervention; or

(c) severe medical or health related problems such as sensory or physical deficits requiring substantial care.

(3) The person must meet medicaid eligibility requirements.

(4) The person must be determined by the field services specialist or the intensive services review committee to meet the eligibility requirements for intensive services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 09 and 10 reserved

**37. 34. 211 ELIGIBILITY: CHILDREN'S COMMUNITY HOME SERVICES**

(1) A child from 5 to 18 years of age or an adult less than 22 years of age is eligible for children's community home services if the person has a developmental disability and meets the requirements for intensive services in ARM 37. 34. 208.

(2) The person must be determined by the field services specialist or the intensive services review committee to meet the eligibility requirements for intensive services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 212 ELIGIBILITY: CHILDREN'S SUMMER DAY SERVICES**

(1) A person is eligible for children's summer day services if the person is:

(a) a child from birth to 18 years of age with a developmental disability;

(b) a child from birth to 6 years of age at risk for developmental delays in one or more of the areas listed in ARM 37. 34. 207(1)(b); or

(c) an adult from 18 to 23 years of age with a developmental disability who is not receiving adult services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 13 and 14 reserved

**37. 34. 215 ELIGIBILITY: STATE FUNDED ADULT SERVICES**

(1) An adult is eligible for state funded adult services if the person has a developmental disability. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 216 ELIGIBILITY: STATE FUNDED ADULT INTENSIVE SERVICES** (1) An adult is eligible for state funded adult intensive services if the person has a developmental disability, has one or more of the characteristics listed in (2) and, without intensive adult services, would be in jeopardy of placement in an ICF/MR due to the inability of the services available to maintain the person in community-based services without additional resources.

(2) Characteristics of persons with developmental disabilities in need of intensive services are:

(a) severe/profound mental retardation, including extreme deficiencies in self-care and daily living skills as compared to age peers;

(b) significant maladaptive social or interpersonal behavior patterns which require an ongoing supervised program of intervention; or

(c) severe medical or health related problems such as sensory or physical deficits requiring substantial care.

(3) The person must be determined by the field services specialist or intensive services review committee to meet the eligibility requirements for intensive services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 217 ELIGIBILITY: FEDERALLY FUNDED INTENSIVE ADULT SERVICES** (1) An adult is eligible for federally funded intensive adult services if the person has a developmental disability, has one or more of the characteristics listed in (2) and, without intensive adult services, would be in jeopardy of placement in an ICF/MR due to the inability of the services available to maintain the person in community-based services without additional resources.

(2) Characteristics of persons with developmental disabilities in need of intensive services are:

(a) severe/profound mental retardation, including extreme deficiencies in self-care and daily living skills as compared to age peers;

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(b) significant maladaptive social or interpersonal behavior patterns which require an ongoing supervised program of intervention; or

(c) severe medical or health related problems such as sensory or physical deficits requiring substantial care.

(3) The person must meet medicaid eligibility requirements.

(4) The person must be determined by the field services specialist or intensive services review committee to meet the eligibility requirements for intensive services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 18 through 20 reserved

**37. 34. 221 ELIGIBILITY: STATE FUNDED SENIOR SERVICES**

(1) An adult is eligible for state funded senior services if the person has a developmental disability and is aged or has physiological or mental conditions characteristic of debilitating aging conditions. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 222 ELIGIBILITY: FEDERALLY FUNDED SENIOR SERVICES**

(1) An adult is eligible for federally funded senior services if the person has a developmental disability, is aged or has physiological or mental conditions characteristic of debilitating aging conditions, has one or more of the characteristics listed in ARM 37. 34. 208(2), and without intensive senior services would be in jeopardy of placement in an ICF/MR or nursing facility due to the inability of the services available to maintain the person in community-based services without additional resources.

(2) The person must meet medicaid eligibility requirements.

(3) The person must be determined by the field services specialist or intensive services review committee to meet the eligibility requirements for intensive services established by the department. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 23 through 25 reserved

**37. 34. 226 ELIGIBILITY: APPEAL PROCEDURES** (1) A person aggrieved by an adverse department action regarding eligibility for any service of the developmental disabilities program, except as otherwise provided in this rule, may request a hearing as provided in ARM 37. 5. 304, 37. 5. 305, 37. 5. 307, 37. 5. 310, 37. 5. 311, 37. 5. 313, 37. 5. 316, 37. 5. 318, 37. 5. 322, 37. 5. 325, 37. 5. 328, 37. 5. 331, 37. 5. 334 and 37. 5. 337, except as otherwise provided in this rule.

(2) An adverse decision regarding eligibility for family education and support services, other than for federally funded Part H family education and support services, is appealable through the internal grievance procedure provided by the contractor. If a resolution to the adverse decision regarding eligibility cannot be reached through the internal grievance procedure, the adverse decision is appealable by an aggrieved party in accordance with ARM 37. 5. 304, 37. 5. 305, 37. 5. 307, 37. 5. 310, 37. 5. 311, 37. 5. 313, 37. 5. 316, 37. 5. 318, 37. 5. 322, 37. 5. 325, 37. 5. 328, 37. 5. 331, 37. 5. 334 and 37. 5. 337.

(3) An adverse decision regarding eligibility for federally funded Part H family education and support services is appealable through the internal grievance procedure provided by the contractor. Parents may choose either to use or not to use the internal grievance procedure. The adverse decision is also appealable in accordance with the procedures for resolving complaints regarding federally funded Part H early intervention services as provided by federal rule at 34 CFR 303.420 through 303.425. The department hereby adopts and incorporates by reference the impartial procedures for resolving individual child complaints regarding federally funded Part H early intervention services published, July 1, 1994, by the United States department of education, at 34 CFR 303.420 through 303.425. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

## Subchapter 3

## Placement Determinations

**37. 34. 301 PLACEMENT DETERMINATIONS: PURPOSE** (1) These rules govern the screening and placement of persons with developmental disabilities into adult services and children's group home services funded by the developmental disabilities program of the department of public health and human services. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 302 PLACEMENT DETERMINATIONS: DEFINITIONS** For the purposes of these rules, the following definitions apply:

(1) "Adult community home services" means the provision of age appropriate residential and habilitation services for two to eight persons with developmental disabilities who are 16 years or older in facilities licensed and certified in accordance with 53-20-305 and 53-20-307, MCA.

(2) "Adult habilitation services" means the provision of services to persons with developmental disabilities who are 16 years or older in non-residential settings. These services include basic life skills, pre-vocational skills, work activities skills, sheltered employment skills, and other skills which are prerequisite or integral to vocational activities and which facilitate movement of persons to increasingly higher levels of independence.

(3) "Adult intensive community home services" means the provision of habilitation and intensive residential training services for two to eight persons with developmental disabilities who have intensive needs and who are 16 years of age or older in facilities licensed and certified in accordance with 53-20-305 and 53-20-307, MCA.

(4) "Appeal process" means the process provided in ARM 37. 34. 335 for pursuing further administrative review of a decision made by a local screening committee or the central screening committee.

(5) "Case manager" means a person who is responsible for coordinating a person's case, compiling referrals for services, chairing individual habilitation team planning meetings, locating needed support services, and otherwise making arrangements to meet a person's ongoing needs.

(6) "Central screening committee" means the committee provided in ARM 37. 34. 310 that reviews all referrals of persons with developmental disabilities for placement into developmental disability adult services or children's group home services funded by the department.



(7) "Children's community home services" means the provision of age appropriate intensive residential and habilitation services for two to five persons with developmental disabilities who are ages 5 through 22 in facilities licensed and certified in accordance with 53-20-305 and 53-20-307, MCA.

(8) "DD program" means the developmental disabilities program of the department of public health and human services, which contracts with service providers to provide community-based services to persons with developmental disabilities who reside or work in services funded by the department.

(9) "Habilitation" means assistance to a person that enables the person to acquire and maintain skills for effectively coping with his or her physical, mental and social needs.

(10) "Independent living services" means the provision of residential training on a regular basis to persons with developmental disabilities who reside in unstructured and unsupervised settings and who require minimal supervision with periodic contact for oversight and training in areas of advanced personal skills, home-related skills and community life skills.

(11) "Individual habilitation planning team" or "IHP team" means an interdisciplinary team composed of those persons specified in ARM 46.8.105 that identifies and evaluates a person's needs, develops a habilitation plan to meet those needs, periodically reviews the progress of the plan and revises the plan accordingly.

(12) "Local" refers to the area of counties that is the responsibility of a local screening committee.

(13) "Person with developmental disabilities" means a person who has a developmental disability as defined in 53-20-202(3), MCA.

(14) "Referral" means a set of standardized forms relating to a person with developmental disabilities and describing services being sought for the person. The referral includes as provided in ARM 37.34.306, a social history, a psychological evaluation, documentation of eligibility for services funded through the developmental disabilities program, and information as to medical condition, skills, behaviors requiring intervention, and any support service needs.

(15) "Regional manager" means a person employed by the developmental disabilities program in one of several field-based supervisory positions.

(16) "Screening" means the process for selection for placement of persons with developmental disabilities into developmental disability adult services or children's group home services funded by the department.

(17) "Senior adult community home services" means the provision of age appropriate residential and habilitation services to two to eight older persons with development disabilities in facilities licensed and certified in accordance with 53-20-305 and 53-20-307, MCA.

(18) "Senior day services" means the provision of services to older persons with developmental disabilities in non-residential settings. These services include age appropriate group activities, maintenance of self-help and social skills and training in leisure activities.

(19) "Services coordinator" means the person in the central office of the DD program who receives and processes materials relating to the placement of persons, administers the central screening process and chairs the central screening committee.

(20) "Service provider" means any entity furnishing services to persons with developmental disabilities under a contractual agreement with the department of public health and human services through the developmental disabilities program.

(21) "Supported employment services" or "vocational placement services" means the provision of assistance in locating competitive employment and providing ongoing training and support to a person with developmental disabilities and to their employers in order to maintain employment for the person with developmental disabilities.

(22) "Supported living" means the provision of individualized services in the community as well as ongoing support as needed to maintain the placement.

(23) "Training and contract manager" means a person employed by the developmental disabilities program in a field-based position.

(24) "Transitional living services" means the provision of training and habilitation services on a regular basis for persons with developmental disabilities who reside in unstructured living situations and require intermittent supervision and assistance in learning advanced personal skills, home-related skills and community life skills.

(25) "Waiting list" means the master list maintained by the DD program, of persons with developmental disabilities who are referred for services and who are determined to be eligible to receive services. This list is maintained by the central office of the DD program. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

37. 34. 306 PLACEMENT DETERMINATIONS: REFERRAL PROCESS

(1) The referral of a person for whom placement is being sought is compiled by the case manager and is submitted to the DD program.

(a) For referral of a local person for a local service placement, referral information is submitted to the regional office of the DD program.

(b) Referrals of a person to other areas or the state as a whole for a service placement are sent to the central office of the DD program.

(c) A referral must be completed and provided to the DD program within 30 calendar days of a decision by the person's planning team to refer the person.

(2) The required referral information is the following:

(a) the department of public health and human services 431 form, documenting the determination that a person is developmentally disabled. The 431 form is not signed by DD program staff until there is adequate documentation of the person's developmental disability and need for services. Within 10 working days of receipt of the referral, DD program staff will send separate written notification on form 53 to the case manager either confirming that there is adequate documentation of DD eligibility and that the person's name will be added to the waiting list, or indicating that additional information is needed. The 431 form will be signed by DDP staff when there is a determination that the person is eligible and sent to the referring party when the person is screened into a service;

(b) the inventory for client and agency planning (ICAP) and the ICAP supplemental form, current to within the last year;

(c) a psychological report documenting a diagnosis of developmental disabilities within the definition at 53-20-202, MCA;

(d) a social history current to within the last year that includes the following information:

(i) information regarding the present functioning level of the person, noting the areas in which the person does well and the areas in which the person needs assistance and further training;

(ii) recommendations for services needed, with any special considerations noted (e.g., medical services, peer group considerations, need for communication devices, recreational interests, etc.);

- (iii) impact on the person if services are not received;
  - (iv) family history, present family involvement and support or involvement of other persons important in the person's life;
  - (v) current medical status and history;
  - (vi) special education and related services provided to the person, including all residential placements outside the family home;
  - (vii) other service providers involved, current and past, with the phone number and name of a contact person for each agency;
  - (viii) description of behavior problems;
  - (ix) any environmental, cultural, or other factors important to assisting the person in a placement;
  - (x) special financial arrangements or hardships that a service provider would need to be aware of in order to assist the person;
  - (xi) vocational interests and employment history;
  - (xii) any alternatives available in the person's home community, if that is the person's preferred place to live, and the status of attempts to secure those alternative services or supports;
  - (xiii) sources of income and benefits and the amounts of those; and
  - (xiv) guardianship information.
- (e) an individual service record (ISR) which must be completed by staff in the DD program office in order to place a person on a waiting list;
- (f) current individual habilitation plan (IHP) or individual treatment plan (ITP), if applicable;
- (g) a copy of the most recent deceleration program or any that has been conducted in the last 3 years;
- (h) other information the referring team chooses to include;
- and
- (i) documentation of the person's preferences for services and service locations.
- (3) Family members and other involved parties are encouraged to include any written comments they have on the person's situation and his/her need for placement.
- (4) Referrals must be updated annually by the case manager on a form that notes the sections that have changed. They may be updated more often than annually if circumstances and needs change before the annual referral update is due.

(5) The DD program will give notice to a referring party when the referral does not contain all required components or when there is inadequate documentation that the person has a developmental disability. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

#### 37. 34. 307 PLACEMENT DETERMINATIONS: SCREENING PROCEDURES

(1) Screening for a specific opening is conducted by a local screening committee. The local screening committee selects the person who is to be offered the opening. The local screening committee must select the person, based on the criteria in ARM 37.34.308, from the persons who have been referred for the placement by the local screening committee and the central screening committee.

(2) Persons to be considered for placement in a specific opening are selected as follows:

(a) the local screening committee, as provided in ARM 37.34.308, chooses from local referrals those persons who appear to be most appropriate for the placement and therefore should be considered for placement; and

(b) the central screening committee, as provided in ARM 37.34.308, chooses from outside the local area those persons who appear to be most appropriate for the placement and therefore should be considered for placement. This list of referrals is provided to the local screening committee.

(3) Before a person is considered for a placement, a DD program staff person must determine the following:

(a) whether the person has been determined to have a developmental disability;

(b) whether the person is being referred for the service that the placement is available in; and

(c) whether the referral contains all the required materials and adequate documentation.

(4) Local screening committee decisions concerning placement must be by consensus. If there is no consensus, the matter is considered to be under appeal and a decision is made by a review as provided in ARM 37.34.335. A request for review from a local screening committee's lack of consensus must be sent within 10 working days of the screening to the services coordinator.

(5) Confidential information will be protected and may only be released for other than administrative purposes if consented to by the affected person or if provided for by legal authority.

(6) Only the screening committee members may be present at and participate in the decision-making concerning selection unless all referred persons have waived their rights to confidentiality.

(7) A person being considered for referral or placement, any person representing a person being considered for referral or placement, or any other interested person may provide materials in support of the person's referral or placement to the central screening committee or local screening committee. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 308 PLACEMENT DETERMINATIONS: CRITERIA (1) The selection of persons to be considered for placement is based on each person's level of need.

(a) A screening committee must consider for referral or placement any person with physically limiting conditions, if the person's level of need is comparable to other persons being considered and if the service would be appropriate for the person after reasonable modifications or accommodations were made.

(b) Factors to be considered in the determination of level of need include but are not limited to the following factors:

- (i) whether the person's health and safety are threatened;
- (ii) whether the person is at risk of losing skills if not placed;
- (iii) whether the person is at risk of losing opportunities and choices if not placed;
- (iv) whether the person is at risk of losing independence if not placed;
- (v) what the person's skill levels are in such areas as motor ability, self-help skills, communication, maladaptive behaviors, or other areas;
- (vi) what services, if any, the person is receiving, and whether those are meeting the person's needs;
- (vii) how far away the person's family is, if they are in contact with the person;
- (viii) how long the person has been on the waiting list;
- (ix) what support services the person needs;
- (x) whether the person has been inappropriately placed in an institution;

(xi) whether the person lives in the natural home and needs services;

(xii) whether the person is in a service that is inappropriate;

(xiii) whether the person is at risk of abuse or neglect;

(xiv) whether the person has no alternatives and faces possible institutionalization if not placed; and

(xv) other considerations relevant to a person's condition and needs.

(2) The selection of a person to whom a placement is to be offered is based on the available services being appropriate for the person chosen.

(a) Factors to be considered in the determination of the appropriateness of the service for a person being considered for placement include but are not limited to the following:

(i) whether the person requires more supervision than the service can provide;

(ii) whether the available staffing ratio provides enough supervision to manage any maladaptive behaviors the person currently exhibits;

(iii) whether the person's medical needs can be met;

(iv) whether any necessary ancillary services such as mental health services, occupational therapy and physical therapy are available;

(v) whether the physical site meets the person's needs;

(vi) whether modifications can be made to accommodate the person's needs; and

(vii) other considerations relevant to the available placement. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 309 PLACEMENT DETERMINATIONS: LOCAL SCREENING COMMITTEES (1) Local screening committees consist of the following voting members:

(a) a training and contract manager from the DD program;

(b) service provider representatives from each DD program-funded service in the community. If a service provider provides more than one program of service, each program of the service provider can send a representative, as long as only one is named as the designated voting member for the service provider; and



(c) a representative from the case management agency. If more than one representative participates, the agency should have one consensus opinion or a designated agency voting member.

(2) Other persons who participate to assist with coordination of service, but who are not voting members, may include:

(a) a representative from the vocational rehabilitation program of the department, when a screening is for a placement into supported employment funded with monies under Title VI part C of the federal Rehabilitation Act of 1973, as amended;

(b) a local school representative when a school-age child is being considered; or

(c) a mental health agency representative when a screening involves persons with diagnoses of both developmental disability and mental illness.

(3) The chairperson of the committee is the training and contract manager from the DD program. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 310 PLACEMENT DETERMINATIONS: CENTRAL SCREENING COMMITTEE (1) The central screening committee members include:

(a) the services coordinator from the DD program;

(b) a representative from the case management agency; and

(c) a service provider representative.

(2) Other persons who participate to assist with coordination of service, but who are not voting members, may include:

(a) a representative from the vocational rehabilitation program of the department, when a screening involves a placement into supported employment funded with monies under Title VI part C of the federal Rehabilitation Act of 1973, as amended;

(b) a representative from a local school, when the screening involves school-age children; and

(c) mental health agency representatives when screenings involve persons who have diagnoses of both developmental disability and mental illness.

(3) The chairperson of the committee is the services coordinator from the DD program.

(4) Decisions are by consensus of the voting members. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 311 PLACEMENT DETERMINATIONS: CATEGORICAL EXCEPTIONS TO PLACEMENT RULES (1) This rule specifies those circumstances in which the selection of a person for a developmental disabilities service position is not subject to or is subject only in part to the screening process specified otherwise in this subchapter. The specified circumstances are those in which there is further development of community services in response to administrative, legislative or federal direction necessitating the movement of a particular person or an identified group of persons into lesser restrictive settings.

(2) A service position serving a person under any of the following circumstances is not subject to the screening process specified otherwise in this subchapter:

(a) an administrative decision is made to expand services so as to serve 4 or more persons who are committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital or who are residing in a nursing facility but for whom appropriate services can be provided in a community setting;

(b) a budgeting decision in the legislative process is made to expand services so as to serve 4 or more persons who are committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital or who are residing in a nursing facility but for whom appropriate services can be provided in a community setting;

(c) a person is placed out of a nursing facility in accordance with the requirements of federal law into a service position which is funded with federal monies that are specifically available for the provision of services to that particular person; or

(d) a budgeting decision in the legislative process is made to expand services so as to serve 4 or more persons who are on a waiting list for services, who reside in the community, and who are not committed to the Montana developmental center, eastmont human services center, or the Montana state hospital.

(3) A current or new service position that is available for placement of a person currently in community services whose placement into the position is necessary to open up a placement appropriate for any persons being placed into a community setting as described in (2)(a) and (2)(b) is not subject to the screening process specified otherwise in this subchapter.

(4) A service position used to provide services for the purposes stated in (2)(a), (2)(b) and (2)(d) will be available for those purposes for a period not to exceed 1 year in duration. After the 1 year period, the service position when it may come open will be available to any person who is selected for it in accordance with the screening process otherwise specified in this subchapter. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1994 MAR p. 3199, Eff. 12/23/94; AMD, 1998 MAR p. 176, Eff. 1/16/98; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 12 through 17 reserved

37. 34. 318 PLACEMENT DETERMINATIONS: SUPPORTED LIVING SCREENING (1) Supported living depends on support services and assistance rather than on existing facilities, so factors relating to availability of supports must be considered when making a decision regarding supported living services.

(2) Supported living services are screened using the procedures and criteria in ARM 37. 34. 306 through 37. 34. 310 except as otherwise provided in this rule.

(3) Screening committee determinations regarding supported living consider three criteria in addition to the standard factors:

(a) whether needed supports as listed in the referral are available in the community;

(b) whether there are resources available to fund the supports listed in the referral that do not already exist in the community; and

(c) whether there are legal or medical obstacles to placement at the time of the referral. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 319 PLACEMENT DETERMINATIONS: SUPPORTED EMPLOYMENT SCREENING (1) Supported employment services are based on a job match. Available job placements can vary and some candidates for a service may not match an available job placement.

(2) Supported employment services are screened using the criteria and procedures in ARM 37. 34. 306 and 37. 34. 307 except as otherwise provided in this rule.

(3) Supported employment screenings include the following steps:

(a) a supported employment referral packet is compiled including components required by the vocational rehabilitation program of the department, when funding under Title VI part C of the Rehabilitation Act of 1973, as amended, is to be used;

(b) the screening committee uses a need category form specific to supported employment, to reach consensus on recommendations regarding each referral;

(c) the local screening committee determines which referrals go into a pool of names on the waiting list for supported employment;

(d) if federal Title VI-C funds are to be accessed for the service, the referrals are passed to the vocational rehabilitation single point of access case managers' coalition (SPA) for review;

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(e) the service provider makes a job match from the pool of names when a placement becomes available; and

(f) the local screening committee reviews the selection decision. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 20 through 24 reserved

37. 34. 325 PLACEMENT DETERMINATIONS: SERVICE EXCHANGE

(1) Persons who are recipients of developmental disability services may exchange service placements.

(2) Service exchanges may only occur as follows:

(a) both persons want to make the change;

(b) both IHP teams reach consensus that the move is in the best interests of the persons;

(c) the local screening committee reviews the list of service exchange referrals supplied by the services coordinator and makes sure all names on it are considered. If there are more than two people interested, the local screening committee makes the selection decision regarding the service exchange, considering the same factors used in standard screenings when there are openings; and

(d) there is an agreement in writing between the IHP teams, including the service provider representatives, allowing the persons to return to their previous placements if either of them requests a return within 30 calendar days. That time period may be lengthened if both IHP teams agree.

(3) Service exchanges can involve the same or different towns, and the same or different services. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 26 through 28 reserved

**37. 34. 329 PLACEMENT DETERMINATIONS: TRIAL PLACEMENT**

(1) A placement may be made on a trial basis in the following situations:

(a) A person's current opening may be held open for 30 days at the request of the person or others while the person tries the new placement before making a final decision to take the new placement, as long as:

(i) the current IHP team and the receiving service provider agree, in writing, that a trial placement is needed; and

(ii) agreement is reached prior to the move.

(b) When there is uncertainty as to the ability of a service to meet a person's needs, a person's current service can be held open for a period of time, as long as:

(i) the person's IHP team and the receiving service provider send a written request to the field services and planning bureau chief of the DD program including:

(A) documentation of consensus of the local (receiving) screening committee, the person's IHP team, and the receiving service provider;

(B) behaviorally defined, measurable criteria for dismissal and for acceptance into the service, that have been established by consensus of the IHP team and the service provider; and

(C) the amount of time permitted for the trial placement has been approved. The trial will be no longer than 30 days, with requests for longer periods to be considered by the DD program on a case by case basis. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 330 PLACEMENT DETERMINATIONS: TEMPORARY SERVICE AUTHORIZATION** (1) Temporary service authorizations are approved when there are short-term, time-limited vacancies in vocational or residential services. Such vacancies arise from extended vacations, extended illness, or delays in start dates and screenings.

(2) Temporary service authorizations can be implemented for the following purposes:

(a) to allow a person from the waiting list or an existing program setting to try out services in a different vocational or residential setting;

(b) to allow service providers the opportunity to complete evaluations or assessment, in order to make objective decisions about individual placements; or

(c) to provide a temporary placement when a person has no services or is in an inappropriate service.

- (3) Requirements for a temporary service authorization are:
- (a) a person or other referring party must send a request for a temporary service authorization to the local screening committee;
  - (b) the local screening committee must review and approve the option for the person requesting this authorization, and must approve timelines and any specific conditions for the temporary service authorization. This authorization will not affect screening decisions regarding permanent placements; and
  - (c) the service provider with the temporary vacancy must then make a written request to the DD program regional manager that includes specific timelines and any other conditions or limitations in the service that the service provider can provide on such a temporary basis. The request also should be sent to the person.
- (4) The regional manager will review the request and make the final decision regarding the temporary service authorization. Within 5 working days of receipt of the request, the regional manager will respond in writing to either approve or disapprove the request.
- (5) If service needs change or needs arise that were not known when the service was first authorized and those changes or needs adversely affect the service delivery to the person, the person may be required to vacate the placement. The IHP team makes the decision whether the person needs to leave the service and within what timelines.
- (6) Because temporary service opportunities occur when there is no permanent placement, there is no right to appeal the termination of this temporary arrangement, and no automatic priority for placement if a long-term opening should occur in the same setting. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 31 through 34 reserved



37. 34. 335 PLACEMENT DETERMINATIONS: NOTICES AND APPEALS

(1) The department will provide the following notices in the manner indicated.

(a) The DD program will give notice whether a person is or is not to be referred by the central screening committee to be considered for placement by local screening committees. The notice will be provided in writing by United States mail within 10 working days of the decision to the person and their representative. A local screening committee will give the notice when the person is a local referral. The notice will inform the person that materials in support of the person's placement may be submitted to the appropriate screening committee.

(b) The DD program will give notice whether a person has or has not been selected for a specific placement. The notice will be provided in writing by United States mail within 10 working days of the screening committee decision to the person and their representative. The notice will inform a person who has not been selected that the person may request a review of the matter by the developmental disabilities review board and that a decision of the review board may be appealed as provided in ARM 46.2.201 et seq.

(c) The DD program will give notice of a developmental disabilities screening review board decision and that the person may appeal, as provided in ARM 46.2.201 et seq., an adverse decision of the review board and receive a fair hearing.

(2) If either a local screening committee or the central screening committee cannot reach consensus concerning a referral or placement, the matter must be presented to the developmental disabilities screening review board for a determination.

(3) A person referred for placement or a person representing the interests of the person who is dissatisfied with a screening decision may request a review by the developmental disabilities screening review board.

(a) A request for review by the review board must be mailed to the Services Coordinator, Department of Public Health and Human Services, Developmental Disabilities Program, P.O. Box 4210, Helena, Montana 59604-4210.

(b) A request for review must be sent in writing by United States mail within 10 working days of receipt of written notice of the screening committee decision.

(c) The review board will review appeal information and make a decision. The review board will send notification of that decision to the parties involved in the appeal and to the services coordinator.

(d) The review board consists of three members appointed by the director of the department.

(e) Decisions of the review board are based on a majority determination.

(4) The person whose placement is at issue in an appeal or the person's representative may appeal an adverse decision of the developmental disabilities review board as provided in ARM 46.2.201 et seq.

(a) Other persons or entities may not appeal an adverse decision of the review board as provided in ARM 46.2.201 et seq.

(b) The appeal of a determination of the review board must be made in writing within 10 working days of the mailing of notification of the board's determination.

(5) Any notices the DD program provides under this rule will include reference to the advocacy services that are generally available in Montana for persons with developmental disabilities. (History: Sec. 53-2-201, 53-20-203 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-209, MCA; NEW, 1991 MAR p. 2266, Eff. 11/28/91; TRANS, from SRS, 1998 MAR p. 3124.)

Subchapters 4 and 5 reserved

## Subchapter 6

## Family Services

**37.34.601 FAMILY SERVICES: PURPOSE** (1) Family services include family education and support services, children's community home services and children's summer day services.

(2) The purpose of family education and support services is to obtain or provide resources, support, training and assistance designed to assist a child and to enhance the capacity of a family to promote the development of a child.

(3) The purpose of children's community home services is to provide a healthy and safe living environment to meet the needs of children with intensive developmental disabilities who no longer reside with a natural or foster family. This living arrangement supports a child's overall development, provides opportunities for socialization and the development of leisure skills, and facilitates integration into community life.

(4) These rules define services and describe the specific services available, program components, program requirements and limitations, contractor performance requirements, and education and training requirements.

(5) The definitions used for federally funded intensive home and community family education and support services, except for those in ARM 37.34.602, are at ARM 37.34.901, et seq. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 602 FAMILY SERVICES: GENERAL DEFINITIONS These definitions apply to all family services.

(1) "Children's community home" means a licensed, home-like living arrangement in which 2 to 6 children with developmental disabilities who are between 5 and 22 years of age and have intensive needs, reside under the general care and supervision of community home staff.

(2) "Children's community home services" means residential services for children with developmental disabilities who have intensive needs and who are unable to reside with their families or with a foster family. Children's community home services provide children with physical care, guidance, resource and service coordination, and direct instruction based on developmental models and principles of normalization. Children's community home services include:

(a) providing a community-based residential alternative to natural and foster homes;

(b) helping children with disabilities reach their maximum developmental potential;

(c) coordinating the provision of individualized services for children such as special education, day services, recreation, and other community-based services; and

(d) assisting children with disabilities to increase their level of personal independence, move on to less restrictive settings, and lessen their reliance on the service system.

(3) "Children's summer day services" mean day services occurring during the summer that provide both formal and informal functional education and training and leisure and recreational activities designed to promote development, independence, and acquisition of individual skills. Training is provided in such areas as self-help, social, language, pre-academic, academic, motor and prevocational.

(4) "Core services" means those services available to all children and families based on needs identified in the individual family service plan (IFSP). Core services include evaluation and assessment, individualized family service plan, support coordination, information and referral, and procedural safeguards.

(5) "Evaluation and assessment" means a process for determining a child's initial and continuing eligibility for services. The evaluation process is a responsive and individualized set of procedures for completing the eligibility determination process in a fair and timely fashion.

(6) "Family" means natural parents, adoptive parents, foster parents, grandparents, guardians, stepparents or others with whom a child lives, and persons who are legally responsible for the child's welfare.

(7) "Family education and support services" means types of services that provide resources, supports and assistance designed to assist a child and to enhance the capacity of a family to promote the development of a child. The family, in partnership with program staff, establishes priorities and assists in the development, implementation and evaluation of the IFSP. Family education and support services include:

(a) helping children with disabilities reach their maximum potential;

(b) keeping children with their families in their home communities;

(c) assisting families in maximizing their skills and abilities to utilize generic and specialized resources; and

(d) helping families avoid unnecessary reliance on the service delivery system.

(8) "Family services" means family education and support services, children's community home services, and children's summer day services.

(9) "Family support specialist" means a person employed by a family services contractor to deliver support coordination services.

(10) "Individual educational program" (IEP) means, as defined at ARM 10.16.1207, a plan of outcomes and objectives which address a child's educational strengths and deficits.

(11) "Individualized family service plan" (IFSP) means a written plan for organizing and directing the delivery of family education and support services to a child and the child's family. The plan includes information regarding a family's concerns and priorities for resources, supports and assistance. The plan helps each family establish and achieve its goals. The plan is part of a dynamic planning process undertaken by an interdisciplinary team. The family is the primary member of the team and is the final decision maker.

(12) "Information and referral" means assistance by contractor staff in informing families not currently served of program criteria, evaluations, and providing direction to the most appropriate available resources which may meet their needs. Information and referral includes investigating the availability and appropriateness of various resources, explaining the options available to the family, and contacting the agencies on behalf of the family. Information and referral also includes the provision of information requested by families previously served.

(13) "Parent" means a natural parent, guardian, or a person acting as the parent of a child, or a surrogate parent who has been appointed in accordance with federal statute. The term includes grandparents, stepparents, or others with whom a child lives, and persons who are legally responsible for the child's welfare. The term does not include the state.

(14) "Procedural safeguards" mean measures to provide a child and family with appropriate involvement in the planning, development, and provision of services and to provide due process concerning decisions that they believe adversely affect the provision of services.

(15) "Resource and support wrap-around services" means items or services obtained or provided for the purpose of accomplishing IFSP objectives. These services may include assistive technology, audiology, support coordination, family education, counseling, home visits, health, nursing, nutrition, occupational therapy, physical therapy, psychology, social work, special instruction, speech-language pathology, transportation, and vision services. The component services of resource and support wrap-around services for purposes of state-funded family education and support services and for federally funded Part H family education and support services are defined in ARM 37. 34. 604. The component services of resource and support wrap-around services for purposes of federally funded intensive family education and support services are defined at ARM 37. 34. 901, et seq.

(16) "Support coordination" means assistance and services provided by a family support specialist or an intensive support coordinator to assist and enable a child and the child's family to receive the rights, procedural safeguards, and services that are provided through the family education and support services programs. Support coordination includes:

(a) assisting a family to access or modify existing community resources, both formal and informal;

(b) assisting a family to gain access to, facilitating the timely delivery of, and coordinating and monitoring the resources and services identified in the IFSP;

(c) coordinating all activities associated with the development, implementation, and evaluation of an IFSP;

(d) maintaining a record of support coordination activities in each child's record;

(e) coordinating the performance of evaluations, assessments and family information gathering activities;

(f) coordinating and monitoring the delivery of available resources;

(g) informing the family of legal rights related to special services;

(h) informing families of the availability of advocacy services;

(i) coordinating with medical and health providers when requested by the family;

(j) facilitating the development of a transition plan to other services; and

(k) completing referral information when the child is ready to move to a new service. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rule 03 reserved

**37. 34. 604 FAMILY SERVICES: DEFINITIONS FOR STATE FUNDED AND FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES** These definitions apply to state funded family education and support services and to federally funded Part H education and support services.

(1) "Assistive technology devices" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology services" means services that directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

(a) evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing early intervention and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(f) training or technical assistance for professionals including persons providing early intervention or rehabilitation services, or other persons who provide services to, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Audiology services" means the identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques. Audiology services include:

(a) determining the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(b) referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(c) providing auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;



(d) providing services for prevention of hearing loss; and  
(e) determining the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(4) "Family education, counseling, and home visits" means services provided, as appropriate, by family support specialists, and other qualified personnel, including but not limited to, psychologists, professional counselors and social workers, to assist the family of a child in understanding the special needs of the child and how to enhance the child's development.

(5) "Full service" means services, supports and resources furnished to a child and family eligible for federally funded Part H family education and support services or for state funded family education and support services. The child and family are served in accordance with an IFSP, through service coordination provided at a minimum of one staff contact per month. This service provides access to resources and support wrap-around services.

(6) "Health services" means medical services necessary to enable a child to benefit from other family education and support services during the time the child is receiving family education and support services.

(a) Health services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressing or colostomy collection bags, other health services, and consultation by physicians with other service providers concerning the special health care needs of children that will need to be addressed in the course of providing other early intervention services.

(b) Health services do not include services that are surgical, medical or medical-health in nature. Excluded services include, but are not limited to, cleft palate surgery, surgery for club foot, the shunting of hydrocephalus, hospitalization or management of congenital heart ailments, the prescribing of medicine or drugs for any purpose, devices necessary to control or treat a medical condition, immunization and regular well-baby care routinely recommended for all children.

(7) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for family education and support services.

(8) "Nursing services" means the provision of medically necessary nursing care as prescribed by a medical professional. Nursing services include:

(a) assessing health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(b) providing nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(c) administering medications, treatments, and regimens prescribed by a licensed physician.

(9) "Nutritional services" means services to maintain and improve the nutrition of a person. Nutritional services include:

(a) individual assessments in nutritional history and dietary intake, anthropometric, biochemical, and clinical variables, feeding skills and feeding problems, and food habits and food preferences;

(b) developing and monitoring appropriate plans to address the nutritional needs of a child based on the child's individual needs assessment; and

(c) referral to appropriate community resources to carry out nutrition goals.

(10) "Occupational therapy services" means therapy services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings. Occupational therapy services include:

(a) identification, assessment, and intervention;

(b) adapting the environment, and selecting, designing and fabricating assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(c) preventing or minimizing the impact of initial or future impairment, delay in development, or loss of functional ability.

(11) "Physical therapy services" means therapy services to enhance sensorimotor function through therapies addressing musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Physical therapy services include:

(a) screening, evaluation, and assessment of the child to identify movement dysfunction;

(b) obtaining, interpreting, and integrating information appropriate to program planning, to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(c) providing individual and group services to prevent, alleviate or compensate for movement dysfunction and related functional problems.

(12) "Psychological services" means services to assess a person's mental or developmental status. Psychological services include:

(a) administering psychological and developmental tests, and other assessment procedures;

(b) interpreting assessment results;

(c) obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(d) planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(13) "Social work services" means services to improve a person's social well-being. Social work services include:

(a) making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(b) preparing social or emotional developmental assessments of the child within the family context;

(c) providing individual and family-group counseling with parents and other family members and appropriate social skill-building activities with the child and parents;

(d) working with problems in a child's and family's living situation where family education and support services are provided that affect the child's maximum utilization of family education and support services; and

(e) identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from family education and support services.

(14) "Special instruction services" means the design of learning environments and activities to promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction. Special instruction services include:

(a) planning curriculum, including the planned interaction of personnel, materials, and time and space, to achieve the outcomes in the child's IFSP;

(b) providing families with information, skills and supports to enhance the skill development of the child; and

(c) working with the child to enhance the child's development.

(15) "Speech-language pathology services" means services to enhance a person's speech and language skills. Speech-language pathology services include:

(a) identifying children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(b) referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(c) providing of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(16) "Transportation services" means providing the cost of travel, including but not limited to mileage or travel by taxi, common carrier, or other means, and related costs. Related costs include, but are not limited to, parking expenses necessary for a child and the child's family to receive family education and support services.

(17) "Vision services" means services to enhance or to compensate for vision loss. Vision services include:

(a) evaluating and assessing visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(b) referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(c) training in communication skills, orientation and mobility for all environments, visual, independent living skills, and other skills necessary to activate visual motor abilities.

(18) "Other services" means family education and support services that are identified in the IFSP and that are useful in meeting the developmental needs of the child and the concerns and priorities of the family.

(19) "Respite services" means services to relieve the stress of constant care. Respite care services include, but are not limited to, respite care hours, transportation, and recreation or leisure activities for the child and family. These services are designed to meet the safety and daily care needs of each child and the needs of the child's family so as to reduce family stress generated by provision of constant care to a family member with a developmental disability. Respite services are provided based on the availability of funds. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 605 FAMILY SERVICES: DEFINITIONS FOR STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES These definitions apply to state funded family education and support services.

(1) "Annual service agreement" means a yearly plan developed with a family to provide limited or follow-along family education and support services.

(2) "At risk" means a child, from birth to 6 years of age, who is at risk of a delay in development or of having a developmental disability due to environmental risk, established risk, or biological risk.

(3) "Biological risk" means a child who has a probability of aberrant development due to a history of prenatal, perinatal, neonatal, and early development events suggestive of biological insult to the developing central nervous system. The events, either singly or collectively, increase the probability of later appearing aberrant development.

(4) "Child education" means education that enables family members to conduct specific skill acquisition, stimulation, or behavioral intervention programs with the child.

(5) "Environmental risk" means a biologically sound child who has a high probability of developmental delay due to life experiences unless there is corrective intervention. Life experiences that may contribute to developmental delay include maternal and family care, health care, opportunities for expression of adaptive behaviors, and patterns of physical and social stimulation that are sufficiently limiting.

(6) "Established risk" means a child has a probability of developmental delay due to early appearing aberrant development that is related to diagnosed medical disorders of known etiology bearing relatively well known expectancies for developmental delay.

(7) "Family education" means education that enables family members to function as independently as possible in providing or obtaining services and supports for the child so that reliance on services is minimized or eliminated.

(8) "Follow-along service" means support coordination services developed and provided in accordance with an annual service agreement for one to four staff contacts per year.

(9) "Limited services" means services, supports and limited resources furnished to a child and family. Limited services are developed and provided in accordance with an annual service agreement. Limited services may include up to 4 staff contacts per year. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 06 through 08 reserved

**37. 34. 609 FAMILY SERVICES: GENERAL REQUIREMENTS**

(1) Family services must be provided in accordance with the performance requirements in this rule.

(2) The department will enter into contracts with entities to provide family services.

(3) A contractor providing family services must comply with the performance requirements in this rule and the contract.

(4) All facilities, other than the parent's home, used in the provision of services must meet all applicable licensure requirements and health and safety codes.

(5) Policies and procedures must be maintained and implemented to ensure:

(a) a safe, healthy environment for all children served; and

(b) the safe transport of all children.

(6) Supervision, support, care, education, training, health monitoring and medical assistance must be provided in accordance with the needs of the child and as specified by the IFSP or IP team.

(7) Planning teams, in the planning for the provision of services, except for federally funded Part H family education and support services, must consider the level of services the individual is enrolled in and the availability of funds when making decisions regarding specific services to be provided.

(8) An emergency response system must be maintained as specified in the contract to assist children and staff for emergencies such as medical problems, behavior intervention, disasters, and other similar emergencies.

(9) The contractor must participate in the IFSP or IP team process recommending objectives, as applicable, to the team for each child.

(10) Any activities of the IP or IFSP assigned to the contractor must be implemented.

(11) Transportation must be coordinated to assist each family in meeting the child's needs. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 10 and 11 reserved

**37. 34. 612 FAMILY SERVICES: FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS** (1) Family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing family education and support services must comply with the performance requirements in this rule and the contract.

(3) Core services must be provided to all families except those families who participate in limited or follow-along services.

(4) The evaluation and assessment process must consider the unique characteristics of the child, the accumulated information about the child, and the child's parents' choices regarding evaluation alternatives.

(a) During initial and ongoing contacts in the evaluation and assessment process, the child must be continually assessed and matched to eligibility requirements for available resources provided by the contractor or other service delivery systems.

(b) The evaluation and assessment process must provide the child's parents with appropriate information for making informed decisions regarding service options for their child and family.

(c) The evaluation and assessment process must be individualized in nature, must be based on the family's primary developmental and functional concerns regarding the child, and must address the child's specific characteristics.

(5) Information and referral must be provided on an as-needed basis. Information and referral to more appropriate services must be provided to children found to be ineligible for developmental disabilities services.

(6) The individualized family service plan (IFSP) must direct the provision of assistance and services to the child.

(a) The needs of the child and the family must be identified and prioritized in the IFSP.

(b) The methods and outcomes established through the IFSP must be consistent with the family's priorities and values.

(c) The family must be allowed to participate in the planning process at the level they find most comfortable. The family must receive written notification of all team meetings and may request written notification of other team members.

(d) The IFSP must meet with the approval of the family.

(e) The IFSP must include every service provided to the child and family.

(f) The funding source for each objective in the IFSP must be identified.



(g) The IFSP must include objectives and prescriptive programs related to the accomplishment of child education outcomes.

(h) Decisions as to the services, resources and supports to be provided must be made with consideration of the level of services the child is receiving and the availability of funding.

(7) Family service records must be maintained documenting each contact with or on the behalf of a child or family and describing the services provided.

(8) The IFSP must be evaluated, revised or rewritten in response to family need or as otherwise necessary.

(9) Support coordination must serve to obtain the supports and services as specified in the IFSP.

(a) Support coordination may only be provided by a family support specialist, an intensive support coordinator, or a family member.

(b) Support coordination manages the delivery of services so as to assure usage of other appropriate services before the IFSP may attempt to develop any new resource to meet an identified need.

(c) Family members may choose to take responsibility for completing certain support coordination activities in accordance with the IFSP.

(d) Each family must be assigned a family support specialist responsible for monitoring support activities.

(10) Respite services must be provided in conformity with an IFSP or an annual service agreement developed with the family.

(a) Respite services are selected in collaboration with the family.

(b) The family selects the persons to provide respite care.

(c) Respite services are provided based on the availability of funds.

(11) Procedural safeguards must be accorded to children and families receiving family education and support services.

(a) Parents must be provided the opportunity to examine, inspect or review records relating to evaluations, assessments, eligibility determination, IFSP development and implementation, individual complaints dealing with the child, and any other areas involving records about the child and the child's family.

(b) Parents must be given prior notice for matters of eligibility, evaluation, or placement of the child. Notice must be effectively given by means of native language or other communication form when appropriate.

- (c) Parental prior consent must be given in writing for:
  - (i) conducting the initial evaluation, child assessment, and family information gathering;
  - (ii) initiating the provision of services for the first time, or any time a change in service is being considered; and
  - (iii) the exchange of personally identifiable confidential information.
- (d) Parents must be allowed to decline all services or a specific service. Declining a service must not jeopardize the receipt of other services.
- (e) A surrogate parent must be appointed when:
  - (i) no parent can be identified;
  - (ii) the division, appropriate state agency, or the family services agency cannot discover the whereabouts of a parent after engaging in reasonable efforts; or
  - (iii) the child is a ward of the state under law.
- (f) Personally identifiable information must be kept confidential.
- (g) An adverse decision affecting services to the child or family may be appealed.
  - (i) A decision must be appealed through the internal grievance procedures of the contractor. If a resolution cannot be reached with the contractor, the decision is appealable under the provisions of ARM 46.2.202, et seq.
  - (ii) For federally funded Part H family education and support services, a decision must be appealed through the internal grievance procedures of the contractor. If a resolution cannot be reached with the contractor, the decision is appealable in accordance with the procedures for resolving complaints regarding federally funded Part H early intervention services as provided by federal rule at 34 CFR 303.420 through 303.425. The department hereby adopts and incorporates by reference the impartial procedures for resolving individual child complaints regarding federally funded Part H early intervention services published, July 1, 1994, by the United States department of education, at 34 CFR 303.420 through 303.425.
- (h) Each family must be provided with a copy of procedures for appealing decisions made by the contractor.
- (i) Child and family participation in family services is on a voluntary basis.
- (12) An annual consumer satisfaction survey of families who received services during the year must be conducted and the results provided to the department.
- (13) A monthly waiting list must be submitted to the department's regional office according to procedures defined by the department.

(a) An inventory for client and agency planning (ICAP) must be completed and submitted for each child on the waiting list, each child enrolled in services, and upon initial enrollment, for each child waiting for or receiving limited or follow-along services.

(14) Family education and support services staff assist a family in selecting and training providers to achieve identified IFSP outcomes.

(a) A family generally may select and train providers of resource and support wrap-around services. In certain circumstances requiring specialized training, family education and support services staff may recruit, screen, and interview potential providers.

(15) Family education and support services staff monitor and document service delivery. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 613 FAMILY SERVICES: STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS** (1) State funded family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing state funded family education and support services, including limited and follow-along service, must comply with the performance requirements in this rule and the contract.

(3) The family of a child receiving limited service must have at least one annual face-to-face visit with contractor staff to develop an agreement with the family to provide access to limited resources and up to three additional support coordination contacts per year.

(4) The family of a child receiving follow-along service must have at least one annual face-to-face visit with contractor staff to develop an agreement with the family to provide up to three additional support coordination contacts per year.

(5) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

(i) familiarization with the contractor corporation and its role in the provision of respite services; and

(ii) familiarization with a family information profile form and procedures for using the profile. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 614 FAMILY SERVICES: FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS** (1) Federally funded Part H family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing federally funded family education and support services must comply with the performance requirements in this rule and the contract.

(3) All services must be provided in accordance with the policies and procedures contained in Montana's state plan under Part H of the Individuals with Disabilities Education Act as approved by the United States department of education. The department hereby adopts and incorporates by reference the Montana state plan under Part H of the Individuals with Disabilities Education Act as approved November, 1994, by the United States department of education. A copy of the plan may be obtained from the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) All services available through other accessible funding sources must be provided through those other funding sources prior to any expenditure for those services through federally funded Part H family education and support services.

(5) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

(i) familiarization with the contractor corporation and its role in the provision of respite services; and

(ii) familiarization with a family information profile form and procedures for using the profile. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 615 FAMILY SERVICES: FAMILY EDUCATION AND SUPPORT SERVICES RESOURCE AND SUPPORT WRAP-AROUND SERVICES REQUIREMENTS** (1) Resource and support wrap-around services must be provided in accordance with the IFSP.

(2) Resource and support wrap-around services are available for a child and family eligible under federally funded Part H family education and support services.

(3) Resources and support wrap-around services are available for a child and family under state funded family education and support services only as availability of funding allows. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37.34.616 FAMILY SERVICES: FEDERALLY FUNDED INTENSIVE FAMILY  
EDUCATION AND SUPPORT SERVICES REQUIREMENTS**

(1) Federally funded intensive family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing federally funded intensive family education and support services must comply with the performance requirements in this rule and the contract.

(3) Services must be provided in accordance with the general rules governing home and community services for persons with developmental disabilities at ARM 37.34.901, et seq.

(4) A contractor must be a designated organized health care delivery system.

(5) All services available through other accessible funding sources must be provided through those sources prior to any expenditure through federally funded intensive family education and support services.

(6) At least one contact each month with or on behalf of a family for the purpose of providing support coordination, direct services or to provide supervision and consultation to subcontracted personnel must be documented.

(7) The residential status of each child on the caseload must be reported to the regional manager at the beginning of the fiscal year.

(8) All possible or actual movement from a natural home or a foster home must be reported to the regional manager as soon as possible.

(9) Recruitment activities must be done for the purpose of securing and maintaining foster families willing to consider long-term placement, including shared care or back-up foster families, respite providers and emergency placement providers.

(a) Recruitment activities and results must be coordinated with the child and family services division.

(b) Families interested in providing foster care must be screened in cooperation with the licensing agency.

(10) No more than one person with severe disabilities may be placed in a home.

(11) A foster family under consideration must meet the child and, when possible, the child's natural parents, and a trial visit must take place prior to the decision regarding placement.

(12) Documentation of agreements with families and subcontracted personnel to provide paid habilitation services must be maintained.

(13) Habilitation programs must be carried out in accordance with each child's IFSP.

(14) A cost projection sheet corresponding to the plan of care must be developed at no less than 6 month intervals. The cost projection sheet must conform to allowable costs and identify funding sources.

(15) A contractual requirement that intensive family support funds be portable to another qualified intensive family support contractor must be complied with.

(16) Each family on the waiting list must be contacted at least annually to determine their continuing need for services and provide information and referral.

(17) Selection for a service opening must be made in accordance with departmental procedures.

(a) The department's regional office must be notified of service openings.

(b) Each family on the waiting list must be informed of any service openings.

(c) Written notice of screening decisions must be provided to interested families. Written notice includes description of the department's procedure for requesting a fair hearing.

(18) The provision of services to eligible children must be reported on a separate quarterly and final expenditure report for Montana's home and community services program for persons with developmental disabilities.

(19) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

(i) familiarization with the contractor corporation and its role in the provision of respite services; and

(ii) familiarization with a family information profile form and procedures for using the profile. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 17 through 20 reserved

37. 34. 621 FAMILY SERVICES: CHILDREN'S COMMUNITY HOME SERVICES REQUIREMENTS (1) Children's community home services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing children's community home services must comply with the performance requirements in this rule and the contract.

(3) Children's community home services must ensure that the child's basic life and health care needs are met.

(4) A primary goal of children's community home services is to increase the independence of children with disabilities, especially in the areas of self-help, socialization, and community interaction.

(5) The provision of services must be based on the objectives set by each child's individual planning (IP) or individual education program (IEP) team.

(6) Residents must be provided a healthy, well-balanced diet and suitable clothing.

(7) Residents must be provided the care, habilitation and guidance necessary to meet the intensive needs.

(8) Physical care, supervision, and support must be provided according to the needs of the child.

(9) Policies and procedures must be maintained to ensure health monitoring and medical assistance is provided or secured for all children served.

(10) Weekly opportunities for a variety of integrated community activities must be provided unless otherwise specified by the IP team.

(11) Daily opportunities for a variety of leisure activities must be provided unless otherwise specified by the IP team.

(12) Facilities that the department determines are appropriate must be designed and configured so as to have the potential for certification according to ICF/MR licensing requirements for residents for whom self-evacuation is impractical.

(13) Provisions must be made in accordance with the requirements of the contract for children to remain at home during the day in cases of illness, episodic behavior, or individual schedules to accommodate service needs.

(14) Transition assistance must be provided for children and their IP teams as they move into a different setting or adult services.

(15) Education and training at a minimum must be provided in the following areas of skill development:

(a) individual self help skills, including but not limited to eating, dressing, bathing, toileting, attending to basic health care needs, telling time, and telephone use;

(b) social interaction skills, including but not limited to general manners, public behavior, sexual awareness and boundaries, and personal safety;

(c) independent living skills, including but not limited to clothing care and selection, household chores, cooking, response to emergencies, home repair and maintenance, leisure and recreational choices and skills; and

(d) community living skills, including but not limited to shopping, use of public or personal transportation, restaurant skills, and traffic safety skills. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 622 FAMILY SERVICES: CHILDREN'S SUMMER DAY SERVICES REQUIREMENTS (1) Children's summer day services must be in accordance with the performance requirements in this rule.

(2) A contractor providing children's summer day services must comply with the performance requirements in this rule and the contract.

(3) The provision of services must be based on the objectives set by each child's individual planning (IP) or individual education program (IEP) team.

(4) Physical care, supervision, and support must be provided in accordance with the needs of the child.

(5) Weekly opportunities for a variety of integrated community activities must be provided, unless otherwise specified by the IP team.

(6) Daily opportunities for a variety of leisure activities must be provided, unless otherwise specified by the IP team.

(7) Transition assistance must be provided for children as they move into different settings or adult services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)



## Subchapter 7

## Adult Services

**37. 34. 701 ADULT SERVICES: PURPOSE** (1) The purpose of adult services is to obtain resources, support, training and guidance designed to assist an individual in the individual's life.

(2) Services, in accordance with the individual planning process provided at ARM 37. 34. 1101, et seq., must meet the needs of the individual served. The individual, in partnership with service staff and significant others, establishes priorities, and participates in the development, implementation and evaluation of the individual plan (IP). Planning teams, in planning for the provision of services, must consider the level of services the individual is enrolled in and the availability of funds when making decisions regarding specific services to be provided. IP objectives are designed to address areas in an individual's life where assistance is needed based on the assessments and desires of the individual. These areas may include living arrangements, work and day options, transportation, recreation and leisure, citizenship, relationships, and life management.

(3) Services must be provided in environments which enhance the quality of life for the individual. These environments must ensure that the individual's basic life and health care needs are met.

(4) Adult services must assist an adult with developmental disabilities to:

(a) enhance independence and interdependence with others in the community;

(b) expand options for participation in and contribution to society;

(c) increase skills and abilities to enable on-going personal growth; and

(d) reside, work and play in safe, healthy, integrated environments.

(5) The following principles must guide the provision of the assistance and services to an individual:

(a) The individual will have an increasing amount of control and choice in these services.

(b) The individual will have increasing options and flexibility available.

(c) The individual will have an opportunity for a good life with accompanying rights, responsibilities and risk.

(d) The location of activities and the interaction with other persons will be as integrated as possible in the community.

(e) The service will be as least intrusive in the person's life as possible.

(f) The principles of positive programming will be used. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37.34.702 ADULT SERVICES: PERFORMANCE REQUIREMENTS**

(1) Adult services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult services, other than a contractor providing transportation services that are also available to the general public and contracting with the department to provide only transportation services, must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) In the provision of adult services, the contractor must:

(a) ensure that all facilities used in the provision of services meet all applicable licensure requirements and health and safety codes;

(b) maintain and implement policies and procedures for a safe, healthy environment for all individuals served;

(c) maintain and implement policies and procedures which ensure health monitoring occurs and necessary medical assistance is provided or sought for all individuals served;

(d) provide supervision, support, care, education and training according to the needs of the individual and as specified by the IP team;

(e) implement any assigned activities of the IP;

(f) maintain and implement policies and procedures to assist individuals and staff in emergencies such as medical problems, behavior intervention, disasters, and other similar emergencies;

(g) participate in the IP team process, recommending objectives, as applicable, to the IP team for the individual;

(h) coordinate transportation to assist the individual in meeting the individual's needs;

(i) adhere to the service component definitions when specified in the contract; and

(j) provide additional or specialized services or requirements when specified in the contract.

(4) Service options and funding sources may have specific requirements that must be met.

(5) In the provision of intensive adult services, the contractor, in addition to the criteria in (3), must:

(a) provide the level of care, habilitation and guidance necessary to meet the intensive needs of the individual; and

(b) ensure, when specified in the contract, other support services needs are addressed to enhance the ability of the individual to benefit from all services and activities.

(6) In the provision of senior services, the contractor, in addition to the criteria in (3), must:

(a) implement a plan, when specified by the IP team, to allow the individual, based on individual interests and desires, to choose daily routines, including remaining at home. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

37. 34. 706 ADULT SERVICES: COMMUNITY HOME SERVICES REQUIREMENTS (1) Adult community home services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult community home services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) Adult community home services are living arrangements in which 2 to 8 individuals, 16 years of age or older, reside with supervision, care, support and training. In addition to safe, comfortable housing, an individual is provided a healthy, well-balanced diet and is assisted in choosing, caring for and selecting for wear, suitable clothing. Community homes are available to meet a wide range of needs including those of individuals who have intensive or senior needs.

(4) In addition to these rules, community home contractors are required by 53-20-305, MCA to meet the state of Montana licensing requirements for community homes for persons with developmental disabilities.

(5) Service options and funding sources may have specific requirements that must be met.

(6) In the provision of adult community home services, the contractor must provide:

- (a) safe and comfortable housing;
- (b) a healthy, well-balanced diet;
- (c) assistance in choosing, caring for and selecting for wear, suitable clothing;
- (d) weekly opportunities for a variety of integrated community activities unless otherwise specified by the IP team;
- (e) daily opportunities for a variety of leisure activities unless otherwise specified by the IP team; and
- (f) an emergency response system for an individual who is at home during the day without a staff person present. The contractor must have approval from the IP team prior to an individual remaining at home. The system must be approved by the IP team based on the capability of the individual to remain at home and to use the emergency response system.

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(7) In the provision of intensive services, the contractor, in addition to the other requirements of this rule, must:

(a) ensure, when specified in the contract, that facilities are capable of being certified according to ICF/MR licensing requirements for residents for whom self-evacuation is impractical; and

(b) make provisions, when specified in a contract, to allow individuals to remain at home during the day in cases of illness, episodic behavior, or individual schedules to accommodate service needs, such as supported employment. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 07 through 10 reserved

37.34.711 ADULT SERVICES: WORK OR DAY SERVICES REQUIREMENTS (1) Work or day services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing work or day services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and policies, and the contract with the department.

(3) Work or day services include facility-based services and community supported work activities. Supported work activities include individual supported employment, crews, enclaves, and volunteer work. Work or day services are available to meet a wide range of needs including those of individuals who have intensive or senior needs.

(4) Service options and funding sources may have specific requirements that must be met.

(5) In the provision of work or day services, the contractor must:

(a) provide any combination of work or day services, including supported work activities, according to the choices and needs of the individual and as specified by the IP team; and

(b) design activities, built on an array of options, that meet the needs and desires of the individual.

(6) A contractor for work or day services must ensure that medicaid home and community services monies are only expended on persons who are eligible for federally funded intensive adult services as provided in ARM 37.34.217.

(a) The person must have formerly resided in an ICF/MR or a nursing facility in order to be eligible for work services, including individual supported employment or paid work in any work or day service.

(b) The person who formerly resided in an ICF/MR or a nursing facility must not earn more than 50% of the minimum wage in a work activity center or sheltered workshop. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 712 ADULT SERVICES: SUPPORTED LIVING SERVICES REQUIREMENTS (1) Supported living services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing supported living services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) A service placement designated as an independent living or transitional living placement as of June 30, 1995 or designated after June 30, 1995 as a supported living placement but specified by contract to be a not fully converted placement, is subject only to the requirements in (4) through (7).

(4) Supported living services identify, provide, and coordinate necessary supports to maintain individuals in communities of their choice and create opportunities to have valued residential, vocational, and social opportunities. Supported living services make living arrangements available to individuals who are at least 18 years old and reside in neighborhood housing. The level and intensity of supervision, care, support, training, guidance and coordination of services and resources is based on individual needs, as determined by the IP team.

(5) Service options and funding sources may have specific requirements which must be met.

(6) In the provision of supported living services, the contractor must provide:

(a) identification of service needs including necessary resources and supports;

(b) identification, development, and access to existing resources and support networks;

(c) necessary current and future planning; and

(d) facilitation of personal choice, opportunities, and supports.

(7) In the provision of supported living services, the contractor must:

(a) provide supervision, support, care, training and guidance according to the needs of the individual as specified by the IP team;

(b) provide frequency of personal contact by staff with the individual as specified by the IP team;

(c) provide or encourage participation in a variety of integrated community activities;

(d) discuss and plan with the IP team, as appropriate for each individual, health and safety issues based on information gathered prior to the IP meeting including a risk assessment;

(e) recommend to the IP team a plan for each individual that will identify an emergency backup support and crisis response system to deal with problems or issues arising when support services are interrupted or delayed, or individual's needs change; and

(f) maintain the services for all supported living opportunities as described in the contract.

(8) Individuals and their representatives must have the opportunity to participate in the hiring of direct care staff assigned to work with them.

(9) There must be an individualized cost plan for each individual that includes a plan of care inclusive of supports which denote all support costs, administrative and support coordination costs.

(10) There must be portability of all or a portion of supported living funds to another qualified supported living provider as specified in the contract.

(11) There must be a consumer evaluation of supported living services conducted at least annually with a summary maintained.

(12) Supported living coordination must:

(a) teach the individual and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require. This allows them to become less reliant on the service system, generally, and supported living coordination, specifically;

(b) provide in-service training to those people providing habilitation, personal care, or other services to the recipient;

(c) manage personal and plan funding to ensure that personal and service needs are being met and that funds are efficiently utilized and accurately reported;

(d) provide for adequate supervision of the individual during the day, evening, and weekend;

(e) hire and supervise qualified staff to provide supported living services with input from the individual and caregivers;

(f) subcontract for services required by the plan of care;



(g) conduct periodic assessments of risk in order to ensure that the supported living arrangement is appropriate and safe given the individual's unique abilities and needs;

(h) conduct individual assessments specifically related to the supported living service. These assessments will not duplicate assessments completed by developmental disabilities case managers in scope or type of data collected;

(i) contract for suitable high quality housing, when necessary; and

(j) require documentation of the services provided and for approving payments to direct service providers. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 713 ADULT SERVICES: SUPPORTED LIVING SERVICES SAFETY REQUIREMENTS** (1) A contractor who provides supported living services must comply with the safety requirements in this rule.

(2) The contractor must document that the individual, with or without assistance, demonstrates the ability to respond to fire and other emergency procedures as specified in this rule, and as specified by the IP team. If the individual lives in the family home, the contractor must document that the individual, with or without assistance, demonstrates the ability to respond to fire and other emergency procedures agreed to by the family. These results must be shared with the IP team. If the individual lives in the family home the results must be shared with the family.

(3) The contractor, if it owns, leases or rents the residence or assists in locating the residence, must provide a safe and healthy living environment.

(4) The contractor must ensure that each residence meets the following life safety requirements:

(a) Smoke detectors must be present in each sleeping room and at a point centrally located in the area giving access to each separate sleeping area. A documented monthly check must occur to ensure that each detector is operating correctly.

(b) A fire extinguisher must be located in the kitchen. A documented annual check must occur to ensure that each extinguisher is operating correctly.

(c) Every room used for sleeping, living or dining must have at least 2 exits, at least 1 of which will be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building.

(d) All exits must be maintained in an unobstructed, easily traveled condition at all times.

(5) The contractor must develop and implement procedures for emergency evacuation to be followed in the case of fire or other emergency, and these emergency procedures shall include a plan for removing all persons, including individuals who need assistance in exiting.

(6) At least annually the contractor must demonstrate that the individual can evacuate safely with or without supervision.

(7) In any circumstances of a potentially unsafe or unhealthy living environment for an individual which the contractor does not own, lease or rent or which the contractor did not assist in locating, the contractor must in concert with the IP team:

(a) discuss and document with the individual and guardian the potentially unsafe or unhealthy concerns in the individual's residence;

(b) provide options to assist the individual in locating a safer and healthier residence; and

(c) ensure that the individual or guardian is making an informed decision to remain in a potentially unsafe or unhealthy residence.

(8) The contractor must maintain and implement procedures for:

(a) individualized, in-place emergency response systems. The individual must demonstrate the ability at least annually to use the system; and

(b) in-place systems for response during times when assigned staff do not report for duty. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Subchapter 8 reserved

## Subchapter 9

## Medicaid Home and Community Services

37. 34. 901 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:

AUTHORITY (1) The department has been granted by the United States department of health and human services (HHS) the authority to provide medicaid home and community services to persons with developmental disabilities. The authority to implement this program is provided in 42 USC 1396n(c) and 42 CFR 441.300 through 441.310. These rules implement in Montana the medicaid home and community services program for persons with developmental disabilities. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 902 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:

GENERALLY (1) The medicaid home and community services program for persons who are developmentally disabled serves persons:

(a) who would otherwise require the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR); and

(b) for whom services provided through the medicaid home and community services program will not jeopardize the person's health and safety.

(2) Eligibility of applicants for the medicaid home and community services program is determined as provided in ARM 37.34.906.

(3) Placement into medicaid home and community services is determined as provided in ARM 37.34.301, et seq.

(4) Services and placements in services through the medicaid home and community services program are available only to the extent that the federal approval of the state's program permits and that available funding allows.

(5) The department, in order to comply with federal requirements or to limit expenditures to available funding, may:

(a) reduce the number of medicaid recipients that may be served under the program;

(b) postpone or waive implementation of a particular service of the program; or

(c) eliminate one or more of the services of the program.  
(History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

37.34.906 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ELIGIBILITY (1) Under the medicaid home and community services program, services may be provided to a person whom the department determines:

(a) has a developmental disability, as defined in 53-20-202, MCA;

(b) is eligible for medicaid;

(c) requires the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR), as determined by an evaluation of the person's service needs by:

(i) the intensive services review committee, as provided in ARM 37.34.907; or

(ii) a qualified mental retardation professional, as defined in ARM 46.12.1310, employed by the department; and

(d) does not reside in a hospital or long term care facility as defined in 50-5-101, MCA.

(i) A long term care facility provides skilled or intermediate nursing care, ICF/MR care and personal care.

(2) The level of care of an ICF/MR is needed when a person who is mentally retarded:

(a) has severe medical problems requiring substantial care, but not to the extent that habilitation is impossible;

(b) has extreme deficits in self-care and daily living skills which require intensive training;

(c) has significant maladaptive social and/or interpersonal behavior patterns which require an on-going, supervised program of intervention; or

(d) has specialized services needs, and exhibits physical or mental limitations or changes similar to those expected in an older person.

(3) A person who has been admitted to an ICF/MR and who is dismissed to enter services under the medicaid home and community services program for persons with developmental disabilities is considered to be of the level of care of an ICF/MR and need not be evaluated as provided in (1). (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 907 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: INTENSIVE SERVICES REVIEW COMMITTEE (1) The intensive services review committee (ISRC) is a state level committee that may review persons referred to the medicaid home and community services program to determine if the person meets the level of care of an ICF/MR, as provided in ARM 37. 34. 906 and is therefore eligible for the program.

(2) The ISRC is composed of at least one representative from the developmental disabilities program and a provider of intensive services. A developmental disabilities case manager and a nurse may also be included on the committee. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 08 through 10 reserved

37.34.911 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
AVAILABLE SERVICES (1) The following services may be provided under the medicaid home and community services program:

(a) intensive support coordination services, as provided in ARM 37.34.925 and 37.34.926;

(b) homemaker services, as provided in ARM 37.34.929 and 37.34.930;

(c) personal care services, as provided in ARM 37.34.933 and 37.34.934;

(d) adult day services, as provided in ARM 37.34.937 and 37.34.938;

(e) habilitation services, as provided in ARM 37.34.941 and 37.34.942;

(f) respite care services, as provided in ARM 37.34.946 and 37.34.947;

(g) occupational therapy services, as provided in ARM 37.34.950 and 37.34.951;

(h) physical therapy services, as provided in ARM 37.34.954 and 37.34.955;

(i) speech therapy services, as provided in ARM 37.34.956 and 37.34.957;

(j) environmental modifications, as provided in ARM 37.34.960 and 37.34.961;

(k) adaptive equipment as provided in ARM 37.34.962 and 37.34.963;

(l) transportation services, as provided in ARM 37.34.967 and 37.34.968;

(m) psychological and professional counseling services, as provided in ARM 37.34.971 and 37.34.972;

(n) nursing services, as provided in ARM 37.34.973 and 37.34.974;

(o) dietitian services, as provided in ARM 37.34.978 and 37.34.979;

(p) supported living coordination, as provided in ARM 37.34.985 and 37.34.986;

(q) meal services, as provided in ARM 37.34.980 and 37.34.981; and

(r) respiratory services, as provided in ARM 37.34.987 and 37.34.988.

(2) Services available to a recipient through the program are limited to the services specified in the recipient's individual plan of care.

(3) Services available to a recipient through the program are limited to services that are not available otherwise to the recipient through the state medicaid program or any other local government, state or federal program for which the person is eligible or would be eligible upon application. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.912 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: GENERAL PROVIDER REQUIREMENTS (1) Medicaid home and community services may be provided only by providers under contract with the department.

(2) A provider that is among the providers listed in ARM 37.34.1801 must be accredited as provided in that rule.

(3) Any facility providing services must meet all applicable licensing requirements and fire and safety standards.

(4) Reimbursement for services, except for transportation service as defined in ARM 37.34.967, shall not be made to parents of minor children or to spouses unless the department approves reimbursement based on a determination by the department that the spouse or parent is delivering a service, not normally a spousal or parental responsibility, requiring specialized skills that necessitate professional type training and knowledge.

(5) Individual persons directly providing services must be mentally and physically capable of assisting recipients as required by the program. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)



37.34.913 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
REIMBURSEMENT (1) Reimbursement under the medicaid home and community services program is only available for services specified in the recipient's individual plan of care.

(2) Reimbursement for services is at those rates that are available under the terms of the contract that the department enters into with providers of services.

(3) Reimbursement is not available in the following circumstances:

(a) for services reimbursable under the state medicaid program or any other local government, state or federal program for which the person is eligible or would be eligible upon application;

(b) for costs of services that exceed the funding available for the recipient as provided in the department's contract with the provider; and

(c) for services provided on an inpatient basis at a hospital or a long term care facility as defined in 50-5-101, MCA.

(4) No copayment will be imposed on recipients for the costs of medicaid home and community services, however, recipients are responsible for copayments on other medicaid services as defined in ARM 46.12.204. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 14 through 16 reserved

37.34.917 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: INDIVIDUAL PLANS OF CARE (1) Individual plans of care for recipients of medicaid home and community services must:

(a) conform with ARM 46.8.105 or alternative procedures approved by the department;

(b) include a description of each service to be provided, the frequency of those services, and the type of provider; and

(c) include the projected annualized costs of each service.

(2) The individual plan of care must be reviewed and approved by the department. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.918 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: INFORMING BENEFICIARY OF CHOICE (1) A person determined by the department to require the level of care provided in an ICF/MR must be given a choice between placement in an ICF/MR or in the medicaid home and community services program.

(2) The person or legal representative must be informed of the feasible alternatives in the community, if any, available under the medicaid home and community services program. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.919 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
NOTICE AND FAIR HEARING (1) The department will provide written notice to applicants for and recipients of medicaid home and community services when determinations are made by the department concerning their status pertaining to level of care and selection or denial for placement.

(a) The department will provide a recipient with notice 10 working days before termination of services due to a determination of ineligibility.

(2) The department will provide a recipient at least 30 calendar days notice before any termination or reduction of services due to limitations upon services or insufficient program funds, as provided in ARM 37.34.902(4).

(3) A person aggrieved by an adverse department determination for a level of care determination finding the person ineligible for services may request a fair hearing as provided in 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(4) A person may request a review and a fair hearing as provided in ARM 37.34.335 for a non-selection or denial of a service made by the department. A person may not appeal a termination or reduction in services undertaken by the department in accordance with ARM 37.34.902(4). (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 20 through 24 reserved

37. 34. 925 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
INTENSIVE SUPPORT COORDINATION SERVICES, DEFINITION

(1) Intensive support coordination services are services for the support and coordination of medicaid home and community services provided to individual recipients in the intensive family support program.

(2) Intensive support coordination services include:

(a) providing ongoing monitoring of the recipient's services;

(b) intervening when necessary to ensure that the recipient's living situation continues to be healthy and safe, and that needs continue to be met;

(c) conducting periodic assessments of risk in order to ensure that the intensive family support arrangement is appropriate and safe given the recipient's unique abilities and needs;

(d) assessing the recipient to determine the resources and services needed to carry out the individual plan;

(e) developing, monitoring, and recording written plans of care in a way the recipient, caregivers, and others understand;

(f) meeting frequently with the recipient, and others, regarding the adequacy of the plan of care, how well the plan is being implemented, and changes which may be necessary in the plan;

(g) teaching the recipient and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require in order to reduce reliance on the service system, generally, and on intensive support coordination, specifically;

(h) facilitating interaction between people working in resource systems;

(i) mobilizing and using natural helping networks such as family members, neighbors and friends;

(j) providing inservice training to people providing habilitation, personal care, or other services to the recipient. Training includes general orientation and training on the specific needs of the recipient and how best to meet those needs;

(k) managing personal as well as cost plan dollars to ensure that personal and service needs are met and that funds are efficiently utilized and accurately reported;

(l) locating and arranging for suitable high quality housing, when necessary;

(m) providing for adequate supervision of the recipient during the day, evening, and weekend;

(n) hiring and supervising qualified staff to provide necessary services, with input from the recipient and caregivers;

(o) subcontracting for services required by the plan of care;

(p) ensuring that the recipient is free to choose a provider from among available qualified providers; and

(q) requiring documentation of the service provided and for approving payment to direct service providers. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 926 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
INTENSIVE SUPPORT COORDINATION SERVICES, REQUIREMENTS

(1) Intensive support coordination may only be provided by corporations under contract with the department.

(2) An intensive support coordinator must:

(a) be certified as a family support specialist;

(b) meet requirements specified by the contract with the department;

(c) provide appropriate intensive support coordination services in the least costly manner; and

(d) implement the plan of care.

(3) The intensive support coordinator must ensure that the service is available on a 24 hour, 7 day a week basis. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 27 and 28 reserved

**37.34.929 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: HOMEMAKER SERVICES, DEFINITIONS** (1) Homemaker services are general household activities performed for persons who are unable to manage their home or care for self or others in the home and for whom there is no one else who can be responsible for these activities.

(2) Homemaker services may include:

(a) meal preparation, cleaning, simple household repairs, laundry, shopping for food and supplies and other routine household care;

(b) household management services consisting of assistance with those activities necessary for maintaining and operating a home and may include assisting the recipient in finding and relocating in other housing; and

(c) teaching services consisting of activities which will improve a recipient's or family's skills in household management and social functioning.

(3) Homemaker services do not include the provision of personal care services as defined in ARM 46.12.555 through 46.12.557. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

**37.34.930 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: HOMEMAKER SERVICES, REQUIREMENTS** (1) A homemaker must be:

(a) able to follow written instructions;

(b) able to communicate by the telephone; and

(c) able to maintain records appropriate to the job assignment. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 31 and 32 reserved

37. 34. 933 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PERSONAL CARE SERVICES, DEFINITIONS (1) Personal care services are defined in ARM 46. 12. 555, except that under the medicaid home and community services program personal care services may include supervision for health and safety reasons. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 934 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PERSONAL CARE SERVICES, REQUIREMENTS (1) A personal care attendant must be:

- (a) able to follow written instructions;
- (b) able to communicate verbally and in writing; and
- (c) able to maintain records appropriate to the job assignment. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 35 and 36 reserved

37. 34. 937 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
ADULT DAY SERVICES, DEFINITIONS (1) Adult day services are functional training services for the health, social, habilitation and supervision needs of a recipient provided in settings outside the person's place of residence.

(2) Adult day services provided to an older recipient may be primarily for skill maintenance and the acquisition of skills that will enable the recipient to participate in a variety of age-appropriate activities supporting the goal of maintaining the recipient's ability to function in the community and to avoid institutionalization.

(3) Adult day services do not include residential overnight services. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 938 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
ADULT DAY SERVICES, REQUIREMENTS (1) An adult day service provider must employ staff experienced in providing services to persons with developmental disabilities, particularly to persons of advanced age.

(2) A provider must provide in-service training in first aid, CPR, behavior management and other identified needs. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 39 and 40 reserved



37.34.941 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
HABILITATION SERVICES, DEFINITION (1) Habilitation services are services that stimulate and maintain the development of a recipient's skills or that reduce behaviors which interfere with the recipient's development.

(2) Habilitation services may include:

(a) intense training required to alleviate severe skill deficits;

(b) on-going, supervised intervention for significant behavior problems;

(c) substantial care needed for medical problems which do not preclude habilitation;

(d) intensive daily care required because of the severity of the recipient's disability and provided by foster parents or other caregivers;

(e) individual habilitation programs carried out by foster parents or other caregivers;

(f) pre-vocational services; and

(g) supported employment services, which provide the opportunity to work for pay in regular employment, to integrate with non-disabled persons who are not paid caregivers, and to receive long term support in order to retain the employment.

(3) Pre-vocational services, or work or day services as provided in ARM 37.34.2111 are services that support habilitative goals necessary for further vocational development. Pre-vocational services prepare a recipient for paid or unpaid employment. Pre-vocational services are not intended to develop specific job skills. Pre-vocational services may include:

(a) training in self-help skills;

(b) motor and physical development;

(c) communication skills;

(d) functional academics;

(e) community life skills;

(f) work skills; and

(g) leisure skills.

(4) Supported employment services may include:

(a) pre-placement activities;

(b) job market analysis/job development;

(c) job match/screening;

(d) job placement/training;

(e) on-going assessment, support, and service coordination;  
and

(f) transportation. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 942 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
HABILITATION SERVICES, REQUIREMENTS (1) Habilitation services may be provided in the following settings:

(a) residential settings. Residential settings include:  
(i) community homes for adults;  
(ii) community homes for children;  
(iii) foster homes; and  
(iv) the recipient's own home.  
(b) day settings. Day settings include:  
(i) day services;  
(ii) prevocational services; and  
(iii) supported employment, otherwise referred to as supported work services.

(2) Prevocational and supported employment services may be provided to only those recipients who formerly resided in an ICF/MR or a nursing facility.

(3) Prevocational services may be provided only to those recipients:

(a) who are compensated for the work they do at a rate that is less than 50% of minimum wage; and

(b) who are not expected to be able to join the general work force within 1 year. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 43 through 45 reserved

37. 34. 946 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPITE CARE, DEFINITION (1) Respite care services are services provided to a recipient so as to temporarily relieve those persons normally caring for the recipient from the responsibility for the care of the recipients. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 947 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPITE CARE, REQUIREMENTS (1) A respite care provider must be aware of emergency assistance systems.

(2) Respite care providers may be required by the intensive support coordinator or the supported living coordinator to be:

(a) knowledgeable of the physical and mental conditions of the recipient;

(b) knowledgeable of the common medications and related conditions of the recipient; and

(c) capable of administering basic first aid.

(3) Respite care may be provided in a recipient's place of residence, in another private residence, or in an appropriate community setting. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 48 and 49 reserved

37. 34. 950 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: OCCUPATIONAL THERAPY SERVICES, DEFINITION (1) Occupational therapy services are defined in ARM 46. 12. 545, except that under the medicaid home and community services program outpatient occupational therapy services may be provided for:

- (a) habilitation;
- (b) maintenance; or
- (c) training for persons providing direct care. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 951 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS (1) Occupational therapy must meet the requirements for occupational therapy services required by ARM 46. 12. 546, except that under the medicaid home and community services program:

- (a) maintenance therapy is reimbursable;
- (i) there is not a limitation on visits for maintenance therapy;
- (b) training for persons providing direct care is reimbursable; and
- (c) participation in the interdisciplinary team planning process is reimbursable. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 52 and 53 reserved

37.34.954 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PHYSICAL THERAPY SERVICES, DEFINITION (1) Physical therapy services are defined in ARM 46.12.525, except that under the medicaid home and community services program physical therapy services may provide for:

- (a) habilitation;
  - (b) maintenance; or
  - (c) training for persons providing direct care.
- (2) Physical therapy treatment training programs may include:
- (a) preserving and improving abilities for independent function, such as range of motion, strength, tolerance, coordination and activities of daily living; and
  - (b) preventing, insofar as possible, irreducible or progressive disabilities through means such as the use of orthotic prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations and sensory stimulation. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.955 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PHYSICAL THERAPY SERVICES, REQUIREMENTS (1) Physical therapy must meet the requirements of ARM 46.12.526, except that under the medicaid home and community services program:

- (a) maintenance therapy may be reimbursed;
- (i) there is not a limitation on visits for maintenance therapy;
- (b) training for persons providing direct care is reimbursable; and
- (c) participation in the interdisciplinary team planning process is reimbursable. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 956 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: SPEECH THERAPY SERVICES, DEFINITION (1) Speech therapy services are defined in ARM 46.12.530, except that under the medicaid home and community services program speech therapy services may be provided for:

- (a) habilitation;
- (b) maintenance; or
- (c) training for persons providing direct care. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 957 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: SPEECH THERAPY SERVICES, REQUIREMENTS (1) Speech therapy must meet the requirements of ARM 46.12.531, except that under the medicaid home and community services program:

- (a) maintenance therapy may be reimbursed;
- (i) there is not a limitation on visits for maintenance therapy;
- (b) training for persons providing direct care is reimbursable; and
- (c) participation in the interdisciplinary planning process is reimbursable. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 58 and 59 reserved

37.34.960 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ENVIRONMENTAL MODIFICATIONS, DEFINITIONS (1) Environmental modifications services are measures that provide the recipient with accessibility and safety in the environment so as to maintain or improve the ability of the recipient to remain in community settings and employment.

(2) Environmental modifications may be made to a recipient's home or vehicle for the purpose of increasing independent functioning and safety or to enable family members or other caregivers to provide the care required by the recipient. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.961 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS (1) An environmental modification provided to a recipient must:

(a) relate specifically to and be primarily for the recipient's disability;

(b) have utility primarily for a person who has a disability;

(c) not be an item or modification that a family would normally be expected to provide for a nondisabled family member;

(d) not be in the form of room and board or general maintenance;

(e) meet the specifications, if applicable, for the modification set by the American national standards institute (ANSI); and

(f) be prior authorized jointly by the provider's board of directors and the department if the cost of the project may exceed \$4,000. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 962 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ADAPTIVE EQUIPMENT, DEFINITIONS (1) Adaptive equipment is equipment necessary to increase the ability of a person with a disability to function independently in community settings and employment. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 963 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ADAPTIVE EQUIPMENT, REQUIREMENTS (1) Adaptive equipment provided to a recipient must:

(a) relate specifically to and be primarily for the recipient's disability;

(b) have utility primarily for a person who has a disability;

(c) meet the specifications, if applicable, for the equipment set by the American national standards institute (ANSI);

(d) be prior authorized jointly by the provider's board of directors and the department if the cost of the project may exceed \$4,000; and

(e) not be available to the recipient through other sources. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 64 through 66 reserved



37. 34. 967 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
TRANSPORTATION AND ESCORT SERVICES, DEFINITION

(1) Transportation services are services furnished by common transportation carrier or private vehicles to transport recipients for needed services or social activities.

(2) Escort services are accompaniment for purposes of providing guidance and assistance. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 968 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
TRANSPORTATION AND ESCORT SERVICES, REQUIREMENTS

(1) Transportation providers must have:

(a) a valid Montana driver's license;

(b) adequate automobile insurance as determined by the department; and

(c) assurance of vehicle compliance with all applicable federal, state and local laws and regulations.

(2) Transportation and escort services must be provided by the most cost effective mode. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 69 and 70 reserved

37. 34. 971 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
PSYCHOLOGICAL AND PROFESSIONAL COUNSELING SERVICES.

DEFINITION (1) Psychological services are defined in ARM 46.12.580 except that under the medicaid home and community services program, psychological services may include:

- (a) consultation with persons providing direct care;
- (b) development and monitoring of behavior programs; and
- (c) counseling to persons caring directly for the recipient when the caregiver's counseling needs are related to the responsibilities of the caregiving relationship.

(2) Professional counseling services are defined at ARM 46.12.620 except that under the medicaid home and community services program, professional counseling services may include:

- (a) consultation with persons providing direct care;
- (b) development and monitoring of behavior programs; and
- (c) counseling to persons caring directly for the recipient when the caregiver's counseling needs are related to the responsibilities of the caregiving relationship. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 972 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
PSYCHOLOGICAL AND PROFESSIONAL COUNSELING SERVICES.

REQUIREMENTS (1) Psychological services must be provided by a psychologist licensed as provided in ARM 8.52.601, et seq.

(2) Psychological services must meet the requirements of ARM 46.12.581 except under the medicaid home and community services program.

(3) Professional counseling services must be provided by a professional counselor licensed as provided in ARM 8.61.1201, et seq.

(4) Professional counselor services must meet the requirements of ARM 46.12.622. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 973 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
NURSING SERVICES, DEFINITION (1) Nursing services are defined in  
37-8-102, MCA.

(2) Nursing services may include:  
(a) medical management;  
(b) direct treatment;  
(c) consultation; and  
(d) training for the recipient or persons providing direct  
care. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204,  
MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA;  
NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p.  
3124.)

37. 34. 974 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
NURSING SERVICES, REQUIREMENTS (1) Nursing services must be  
provided by a registered nurse or licensed practical nurse.

(2) Persons providing nursing services must meet the  
licensure and certification requirements provided in ARM 8.32.401,  
et seq.

(3) Nursing services may be provided to a recipient in the  
recipient's home, or at a vocational or day activity setting.  
(History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA;  
IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW,  
1992 MAR p. 1490, Eff. 7/17/92; AMD, 1995 MAR p. 1136, Eff.  
6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 75 through 77 reserved

37. 34. 978 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: DIETITIAN SERVICES, DEFINITION (1) Dietitian services are services related to the management of a recipient's nutritional needs and include:

- (a) meal planning;
- (b) consultation with and training for persons providing direct care; and
- (c) education for the recipient.

(2) Dietitian services do not include the provision of meals. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 979 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: DIETITIAN SERVICES, REQUIREMENTS (1) Dietitian services must be provided by a registered dietitian or a licensed nutritionist.

(2) Dietitians must meet the qualifications in 37-21-301 et seq., MCA.

(3) Nutritionists must meet the licensing requirements in 37-25-301 et seq., MCA.

(4) Reimbursement is not available for the cost of food items and meal preparation. (History: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205, MCA; NEW, 1992 MAR p. 1490, Eff. 7/17/92; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 980 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: MEAL SERVICES, DEFINITIONS (1) Meal services provide hot or other appropriate meals once or more a day, up to 7 days a week, to ensure that a recipient receives adequate nourishment and to prevent institutional placement. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 981 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: MEAL SERVICES, REQUIREMENTS (1) Meal services may only be provided to recipients who are not eligible to receive meals from any other source, or who need different or more extensive services than are otherwise available.

(2) A full nutritional regimen of 3 meals per day may not be provided as a home and community services. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 82 through 84 reserved

37. 34. 985 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
SUPPORTED LIVING COORDINATION, DEFINITION (1) Supported living coordination activities include:

- (a) teaching the recipient and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require in order to reduce reliance on the service system, generally and on supported living coordination, specifically;
- (b) providing in-service training to those people providing habilitation, personal care, or other services to the recipient;
- (c) managing personal as well as plan costs to ensure that personal and service needs are met and that funds are efficiently utilized and accurately reported;
- (d) providing for adequate supervision of the recipient during the day, evening and weekend;
- (e) hiring and supervising qualified staff to provide supported living services, with input from the recipient and caregivers;
- (f) subcontracting for services required by the plan of care;
- (g) conducting periodic assessments of risk in order to ensure that the supported living arrangement is appropriate and safe given the recipient's unique abilities and needs;
- (h) conducting individual assessments specifically related to the supported living service. These assessments will not duplicate assessments completed by developmental disabilities case managers in scope or type of data collected;
- (i) arranging for suitable high quality housing, when necessary;
- (j) ensuring that the recipient is free to choose a provider from among available qualified providers; and
- (k) requiring documentation of the service provided and for approving payment to direct service providers. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 986 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:  
SUPPORTED LIVING COORDINATION, REQUIREMENTS (1) Supported living coordination may only be provided by corporations under contract with the department.

- (2) A supported living coordinator must have:
  - (a) a B.A. degree from an accredited college in a human service related field; and
  - (b) one year of experience working with people with developmental disabilities; or

- (c) an equivalent combination of education and experience.
- (3) A supported living coordinator must:
  - (a) provide appropriate intensive support coordination services in the least costly manner; and
  - (b) ensure implementation of the plan of care.
- (4) Providers of supported living coordination must ensure that the service is available on a 24 hour, 7 day a week basis. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 987 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPIRATORY SERVICES, DEFINITION (1) Respiratory services include direct treatment, ongoing assessment of medical condition, equipment monitoring and upkeep, pulmonary education and rehabilitation. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 988 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPIRATORY SERVICES, REQUIREMENTS (1) Respiratory therapy services must be provided by a registered respiratory therapist as defined by the national board for respiratory care. (History: Sec. 53-6-402 and 53-20-204, MCA; IMP, Sec. 53-6-402 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Subchapter 10 reserved

## Subchapter 11

## Individual Plans

**37. 34. 1101 INDIVIDUAL PLAN: PURPOSE** (1) An individual plan identifies the supports that are necessary to achieve independence, dignity and personal fulfillment for a person receiving developmental disabilities services. The individual plan ensures that the provision of developmental disabilities services is systematic and that training is designed to enhance the development of the person receiving services. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1102 INDIVIDUAL PLAN: IMPLEMENTATION** (1) A single, comprehensive individual plan must be developed and maintained by an individual planning team for each recipient of state funded developmental disabilities services. Individual plans are not required for persons who are only recipients of one or more of the following developmental disabilities services:

(a) family services where an individual family service plan (IFSP) or an annual service agreement exists;

(b) transportation;

(c) adaptive equipment; or

(d) case management.

(2) An initial individual plan must be developed by the individual planning team within 30 calendar days of a person's entry into a service program, implemented within two calendar weeks of the date of its adoption unless otherwise specified by the team, and formally reviewed and revised at intervals determined by the team. A plan must be formally reviewed and revised as necessary within 12 months from the initial or previously reviewed individual plan.

(3) When a person moves from services in one community to services in another community a service coordination agreement must be in place prior to entry into the new service. The agreement is developed by members of the designated individual planning team at the new service with participation preferably in person, but at least in writing, of a representative from the sending team. The service coordination agreement identifies critical service and training objectives for the person to be implemented immediately upon entry into the new service. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1103 INDIVIDUAL PLAN: COMPONENTS (1) Each individual plan must include the following:

(a) any results of comprehensive assessments, both formal and informal, of the individual receiving services, which identify current abilities and needs. Assessments must include, but are not limited to, the following:

(i) a physical examination, a health assessment and a dental examination completed at appropriate intervals as determined by the health professional;

(ii) a living skills assessment completed within 60 calendar days prior to the individual planning meeting;

(iii) developmental, educational, employment, social or leisure assessments completed or updated within 60 calendar days prior to the individual planning meeting unless the team determines and documents in the individual plan that an assessment should be conducted at other than annual intervals;

(iv) a self assessment; and

(v) other reassessments as needed and identified by the person's individual planning team;

(b) the goals toward which the activities outlined in the plan will be directed;

(c) the specific objectives directed toward accomplishing the goals; and

(d) a summary of medical, dental, and other health related appointments and records for the period since the last individual planning meeting. The summary must include the health professionals' names, the dates of service, the results of the person's most recent health examinations, a list of any prescribed medications, the current methods of administration for any prescription medication, and the purpose of each medication.

(2) The objectives of an individual plan must be prioritized, stated separately in behavioral terms, specifying single outcomes.

(a) An objective must include the following elements:

(i) a statement of the conditions, as appropriate, in which the behavior is to occur;

(ii) an objective, measurable description of the behavior;

(iii) a statement of the acceptable level of performance;

(iv) the names of persons, along with their affiliations, who have been assigned responsibility for implementation of each objective;

(v) the dates by which the programs for each objective assigned by the individual planning team are to be implemented; and



(vi) the date by which each objective is expected to be met.

(3) The individual plan must be signed by all persons who have participated in developing the plan, including the person receiving services. Each participant must indicate whether the person agrees or disagrees with the plan. Each participant must acknowledge the confidential nature of the information presented and discussed. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 04 through 06 reserved

37.34.1107 INDIVIDUAL PLAN: COMPOSITION OF INDIVIDUAL PLANNING TEAM (1) The individual planning team should include the following persons if available and willing to participate:

- (a) the person receiving services;
  - (b) the advocate of the person receiving services, unless the person does not have an advocate;
  - (c) the parents of the person receiving services or other family member(s), if the person is a minor or if the person, even though an adult, requests their participation;
  - (d) the legal guardian of the person receiving services, unless the person does not have a guardian;
  - (e) the case manager of the person receiving services;
  - (f) at least one staff person from each service program who works directly with the person receiving services;
  - (g) the qualified mental retardation professional (QMRP) or designee from the institution of origin if the person receiving services has not yet been formally discharged from that institution;
  - (h) in cases where the person receiving services is currently enrolled in a public school, the persons designated to develop an individualized education plan (IEP);
  - (i) a field services specialist, if the case manager in (1)(e), herein, is a contracted case manager; and
  - (j) professionals such as psychologists, medical personnel and others, as needed.
- (2) If the person receiving services, a legal guardian or parent of a minor is unable to participate in the meeting, the reasons for that absence must be documented in writing by the case manager. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1108 INDIVIDUAL PLAN: STATUS REPORTS AND ANNUAL PLANNING MEETING (1) For each person receiving services, an individual plan status report must be produced on a quarterly basis.

(a) Each corporation providing services for the person receiving services must assign a representative to participate in the development of the quarterly individual plan status report.

(b) A copy of the individual plan status report must be provided to:

(i) the case manager; and

(ii) the developmental disabilities program office, if the case manager is a contracted case manager.

(c) An individual plan status report must include the following:

(i) a summary of progress toward the attainment of the objectives listed in the individual plan;

(ii) the need for or the action taken to assure progress; and

(iii) the need, if any, to reconvene the individual planning team.

(d) The case manager will, depending on the individual plan status report:

(i) discuss the information with an assigned representative from the corporation;

(ii) observe the implementation of objectives;

(iii) review individual progress data to determine if there is a sufficient lack of progress to necessitate notification of the individual planning team; and

(iv) send individual plan status reports to other planning team members upon request.

(2) The individual planning team must meet at least annually to formally review the goals and objectives established at the previous planning meeting. In reviewing the previous plan, the team shall:

(a) analyze progress data for each objective selected at the last team meeting;

(b) modify the goals and objectives as necessary;

(c) determine satisfaction with current services and supports; and

(d) determine further services and supports that are needed.

(History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1109 INDIVIDUAL PLAN: DUTIES OF THE CASE MANAGER

(1) The duties of the case manager in the individual planning process are:

(a) to prepare the person receiving services for the individual planning meeting by asking if the person would like the assistance of an advocate, by obtaining input and eliciting the person's preferences before the meeting and assisting the person in communicating those preferences to the team during the meeting;

(b) to schedule any individual planning meeting and obtain prior to the meeting, the names of additional team members the person receiving services would like to invite;

(c) to notify in writing, except for meetings called in emergency situations when written notification is impossible, all individual planning team members of the name of the person receiving services for whom the meeting is being held, and the date, time and place of the meeting at least 2 weeks prior to the scheduled date of the meeting;

(d) to explain the purpose of the individual planning meeting to the person receiving services and other team members and inform the person and family members of their rights and responsibilities under the individual planning process;

(e) to inform team members of the confidentiality of personal information;

(f) to inform members that all individual planning decisions are made by consensus or through the appeal process if there is a lack of consensus;

(g) to conduct the individual planning meeting;

(h) to document issues discussed at the individual planning meeting, to compile all planning forms, and to disseminate within 2 weeks of the team meeting copies of all documents and forms to all individual planning team members and to any other person that the person receiving services authorizes to receive documents;

(i) to interpret or to appoint the most appropriate individual to interpret all documents and forms of the individual planning process to the person receiving services and any person designated to act on behalf of the person; and

(j) to facilitate the transition, including movement, of the person receiving services to another service or corporation. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 10 through 13 reserved

37.34.1114 INDIVIDUAL PLAN: DECISION MAKING (1) All decisions of an individual planning team must be made by consensus.

(2) If an individual planning team does not have consensus on a matter, the team must adjourn for no more than 5 working days, to allow time for possible resolution of the matter at issue.

(3) A team member who disagrees with the plan or wishes to comment on a matter in the plan, must notify the case manager in writing within 5 working days of receipt of the plan or modification to the plan.

(4) The case manager must schedule an individual planning meeting within 5 working days of receiving written notice that a team member disagrees with the plan or a modification to the plan.

(5) At the individual planning meeting held to reconsider a matter upon which there is disagreement, if a consensus is not reached, the unresolved issues must be clearly stated in the meeting summary. The written summary is sent to each team member.

(6) Each individual planning team member who wishes to express a view point about issues upon which there is disagreement must submit the reasons for agreement or disagreement in writing to the case manager. The case manager must send a cover letter outlining the issues to the regional manager within 10 working days of the previous individual planning meeting. The meeting summary and any written materials submitted by team members are to accompany the letter.

(7) The regional manager, within 10 days of the receipt of a letter from a case manager relating to an appeal, reviews the matter at issue, and after consideration of the meeting summary and any written materials submitted by team members, arrives at a decision in the matter.

(8) If any individual planning team member is dissatisfied with the decision of the regional manager, the team member must notify the case manager in writing within 5 working days of receipt of the regional manager's decision. The case manager must refer the appeal immediately to the individual planning appeal committee as provided in ARM 37.34.1115(3).

(9) In cases where an appeal occurs involving an individual who is currently enrolled in public school, the following procedures apply:

(a) if the appeal arises in a situation where a team member is appealing an issue which impacts an individualized education program (IEP), federal and state authorities governing the IEP process shall have precedence over the appeal process in this rule;

(b) if the appeal arises in a situation where a team member is appealing an issue which does not concern the IEP, the appeal process in this rule shall apply.

(10) The decision of the individual planning appeal committee is the final administrative decision of the department. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37.34.1115 INDIVIDUAL PLAN: INDIVIDUAL PLANNING APPEAL COMMITTEE (1) The individual planning appeal committee is appointed by the administrator of the disability services program.

(2) The individual planning appeal committee is composed of:

- (a) an individual receiving services;
- (b) a parent, guardian or advocate;
- (c) case manager; and
- (d) a service provider.

(3) A representative of the developmental disabilities program central office is responsible for coordinating the activities of the appeal committee.

(4) The appeal committee must establish and make available its own operating procedures. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203, MCA; NEW, 1993 MAR p. 1353, Eff. 6/25/93; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

## Subchapter 12

## Adult and Family Services

37.34.1201 ADULT AND FAMILY SERVICES: EDUCATION AND TRAINING REQUIREMENTS (1) Education and training must be provided in accordance with the performance requirements in this rule.

(2) An adult or family services contractor in providing education and training must comply with the performance requirements in this rule.

(3) Education and training must be directed toward the individual's attainment of goals identified by the IP or the IFSP team.

(4) There are 2 categories of training: formal and incidental. Formal training is a focused, documented effort to accomplish a training objective. Incidental training occurs incidental to daily living and is facilitated through various techniques which recognize that all individuals learn, grow and develop if given the opportunity to do so. Formal training should occur in the environment in which the knowledge, skill or ability will most likely be used.

(5) Training may be most appropriate across a variety of environments. The IP or the IFSP team identifies the settings for specific training objectives. The training method should be the most culturally normative, effective method for the individual and the skill or ability that is the subject of the training. Incidental training should occur across all settings.

(6) Training, formal or incidental, must be provided in the development of one or more of the following areas: motor/physical, communication, self-help and personal care, functional academics, community life, social and sexual, health and safety, home-related skills, adaptive behavior, leisure, work, job-specific training, and self-advocacy.

(7) Motor and physical training develops gross and fine motor skills. Training includes locomotion, body posture and control, motor coordination and physical conditioning.

(8) Communication training develops an individual's ability to affect the environment around them through other people. Training includes receptive and expressive language and control of inappropriate verbalization.

(9) Self-help and personal care training develops independence in basic daily living skills. Training includes eating, toileting, dressing, bathing, hair care, personal hygiene and grooming; clothing selection and care; care of menstrual needs; mobility and care of mobility devices.

(10) Functional academics develops academic skills directly related to independent functioning in the community. Training includes reading and survival word recognition and number concepts and recognition.

(11) Community life training develops independence in the community, locating and using community resources, and interacting with others. Training includes orientation to the community, travel and transportation; community recreation; safety, including traffic signs; shopping skills, restaurant use and use of community services.

(12) Social and sexual training develops independence and acceptance in the community. Training includes interpersonal relationships, birth control, marriage, children and pregnancy; sexual abuse and exploitation; alcohol and drug use; human development; and disease and sexually transmitted disease prevention.

(13) Health and safety training develops the skills necessary to live independently and safely in the community and to maintain optimal health. Training includes self administration of medications; first aid; nutrition; home, work and community safety and response to emergencies.

(14) Home-related skills training develops independence in managing one's own home. Training includes financial management; clothing care and selection; household chores, meal preparation and food handling; home repair and maintenance; time telling; telephone usage; and use and care of major appliances.

(15) Adaptive behavior training develops acceptable alternatives to maladaptive behavior. Training includes positive programming, dealing with difficult situations, anger management, independence, dependability, initiative, versatility and decreasing maladaptive behavior.

(16) Leisure training develops independent, age-appropriate use of free time, both through individual and group activities. Training includes crafts; individual and group games; hobbies and sports.

(17) Work training develops skills which are necessary to functioning in the work environment. Training includes small assembly; color and shape assembly; attention span/attending and following instructions; matching and sorting and simple assembly; quality of work, quantity of work and general work habits; obtaining employment, relating to supervisor and relating to peers.



(18) Job-specific training develops all the skills necessary to succeed in the paid employment that an individual is hired to perform.

(a) Training occurs within the actual job environment and addresses naturally occurring demands and contingencies.

(b) The trainer assists the employee in completing the job until all the tasks can be performed at the standards established by the employer.

(c) Trainer activities may include, but are not limited to performing the job in order to prepare a task analysis; identifying and addressing employee needs; directly training employees within the natural environment and ensuring completion of job requirements for the employer until the employee is completing the job independently.

(19) Self advocacy training develops advocacy skills. Training includes rights, responsibilities and participation in the planning process. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**Rules 02 and 03 reserved**

37. 34. 1204 ADULT AND FAMILY SERVICES: LEISURE AND COMMUNITY ACTIVITIES (1) Leisure and community activities must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult or family services in the provision of leisure and community activities must comply with the performance requirements in this rule.

(3) The individual must be allowed the opportunity to choose community activities to participate in. The individual may choose the activities based on the individual's knowledge of the variety of activities occurring within the community.

(a) The individual should be encouraged and assisted in experiencing a variety of enjoyable community activities.

(4) The individual must be allowed the opportunity to choose leisure activities to participate in. The individual may choose the activities based on the individual's knowledge of the variety of activities occurring within the individual's services and the community.

(a) The individual should be encouraged and assisted in experiencing a variety of enjoyable leisure activities.

(b) A variety of leisure activities should be available, based on the preferences of the persons receiving services. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Subchapter 13 reserved

## Subchapter 14

## Aversive Procedures

**37. 34. 1401 AVERSIVE PROCEDURES, PURPOSE** (1) These rules are adopted to provide a system for the review, approval and implementation of ethical, safe, humane and efficient training procedures for persons with developmental disabilities in programs funded through the developmental disabilities program of the department of public health and human services. It is not the purpose of these rules to advocate the use of aversive procedures. Rather the purpose is to acknowledge that such procedures may be necessary when other less restrictive procedures have failed to significantly modify a person's behavior. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1402 APPLICABILITY** (1) A person in a program of developmental disabilities services, funded entirely or in part by the state of Montana, shall be afforded the protections imposed by these rules. Any provider contracting with the department to provide services to persons with developmental disabilities shall conduct its activities in accordance with these rules. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1403 AVERSIVE PROCEDURES: USE** (1) Aversive procedures may be used in the habilitation of a person with developmental disabilities in accordance with the provisions of these rules.

(2) Aversive procedures may be designed and implemented only for the benefit of the person and may never be used merely as punishment or for the convenience of the staff or as a substitute for a nonaversive program.

(3) Aversive procedures may only be used for reducing or eliminating maladaptive target behaviors.

(4) Corporal punishment and verbal or physical abuse are prohibited. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1404 AVERSIVE PROCEDURES: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Advocate" means a citizen advocate, a representative of the Montana advocacy program, a friend acknowledged by the person to be the person's advocate or the parent/guardian of a person with developmental disabilities.

(2) "Alternative behavior" means a behavior that can, but is not likely to occur at the same time as a maladaptive target behavior.

(3) "Antecedent stimulus modification" means arranging the environment that exists at the time of the occurrence of the maladaptive target behavior in such a way that the maladaptive target behavior becomes less likely to occur.

(4) "Aversive" means any stimulus or event from which a person will seek to escape, avoid or terminate, if given an opportunity to do so.

(5) "Aversive procedure" means a procedure as defined in and implemented in this subchapter that is aversive in nature and is implemented for the purpose of reducing or eliminating a maladaptive target behavior.

(6) "Contingent exercise" means a method of decreasing a maladaptive target behavior by requiring a person who engages in the undesired behavior to perform exercises or movements that are not topographically similar to the maladaptive target behavior.

(7) "Contingent observation" means a method of decreasing a maladaptive target behavior by telling a person they are engaging in a maladaptive target behavior and asking the person to not participate in the ongoing activity for a short period of time, to be seated nearby and to observe others engaging in a specific appropriate behavior. The trainer concurrently attends to and reinforces those persons behaving appropriately. The person who is observing the behavior may rejoin the activity group after a few minutes of observation if the person agrees to behave appropriately. The person who rejoins the group is then reinforced by the trainer when the person exhibits the appropriate behavior.

(8) "Contingent access to social activities and personal possessions including personal funds" means that upon the occurrence of a specified maladaptive target behavior, a person's attendance at social activities and use of personal possessions including personal funds is restricted.

(9) "Corporal punishment" means aversive stimulation that is inflicted directly on the body following a specific maladaptive target behavior that decreases the probability of the behavior occurring in the future. Examples would include but not be limited to spanking, electric shock, lemon juice into the mouth, etc.

(10) "Deceleration program" means the use of systematic program techniques or procedures to decrease the rate of specific maladaptive target behaviors. These deceleration programs must include nonaversive procedures such as: functional analysis of the behavior, teaching replacement behaviors, positive reinforcement, antecedent stimulus modification, differential reinforcement, etc. Systematic deceleration program procedures might also include the use of aversive procedures as defined by this rule.

(11) "Differential reinforcement" means a procedure for providing systematic reinforcers for behaviors so that these behaviors occur more frequently than the maladaptive target behaviors. Variations include:

- (a) differential reinforcement of other behaviors;
- (b) differential reinforcement of incompatible behaviors;
- (c) differential reinforcement of other behaviors on a progressive schedule;
- (d) differential reinforcement of alternative behavior; and
- (e) differential reinforcement of low rate behavior.

(12) "Differential reinforcement of other behaviors (DRO)" means that reinforcement occurs at the end of the interval if the maladaptive target behavior has not occurred during that interval.

(13) "Differential reinforcement of other behavior on a progressive schedule (DROP)" means that the amount a reinforcement will be increased for consecutive intervals in which the specified maladaptive target behavior does not occur, to a maximum level of reinforcement. Once the person has reached the highest level of reinforcement, the amount of reinforcement remains at this level as long as the maladaptive target behavior does not occur. When the maladaptive target behavior does occur, the level of reinforcement returns to the smallest amount.

(14) "Differential reinforcement of incompatible behaviors (DRI)" means that reinforcement occurs following a specified incompatible behavior. The maladaptive target behavior is concurrently placed on extinction.

(15) "Differential reinforcement of alternative behavior (DRA or Alt-R)" means that reinforcement occurs following a specified alternative behavior. The maladaptive target behavior is concurrently placed on extinction.

(16) "Differential reinforcement of low rate behavior (DRL)" means that reinforcement occurs only when the maladaptive target behavior occurs at or below a specified rate.

(17) "Educational fine" means a system of decreasing maladaptive target behavior based upon a token or point system. A small fine is levied contingent upon the occurrence of a maladaptive target behavior. Each fine must be accompanied by a teaching episode which includes a description of the maladaptive target behavior, the amount of the fine, instruction on the appropriate forms of behavior, and the opportunity for the person to "earn back" a portion of the fine for practicing the appropriate behaviors.

(18) "Exclusion time out" means a method of decreasing a maladaptive target behavior by requiring a person to leave an ongoing reinforcing situation for a period of time, contingent on the occurrence of some previously specified maladaptive target behavior. Unlike contingent observation, the person is not instructed to observe the appropriate behavior of others.

(19) "Extinction" means that a previously reinforced behavior is no longer followed with the reinforcing consequence. This makes it likely that over time the behavior will diminish. Extinction is different from punishment in that with extinction the reinforcer is simply no longer given when the target behavior occurs.

(20) "Functional analysis" means the assessment of many variables prior to intervening on a behavior. This assessment could include but not be limited to a review of the following: historical events; antecedent events; consequences; environmental factors such as reinforcer preferences and efficiency, expectations of others, environmental pollutants such as noise and crowding, etc.; and the communicative functions of behavior.

(21) "Graduated guidance" means systematically providing the minimum degree of physical assistance necessary to ensure that a desired behavior occurs. Graduated guidance is a technique combining physical guidance and fading in which the physical guidance is systematically and gradually reduced and faded according to the person's responsiveness. Graduated guidance techniques do not include physical restraint as a primary component. Graduated guidance is assistive rather than restrictive and does not involve forced compliance.

(22) "Incompatible behavior" means a behavior that is opposite to and cannot be emitted at the same time as a maladaptive target behavior.

(23) "Individual program plan (IPP)" means a written set of procedures designed to meet a specific behavioral objective relating to a person's adaptive behavior. For the purposes of decelerating maladaptive target behaviors an individual program plan includes at least the following components:

(a) A clear objective description of the maladaptive target behavior to be reduced or eliminated.

(b) A clear objective description of the incompatible or alternative appropriate response which will be reinforced.

(c) A list of programs to teach replacement behaviors that serve the same behavioral function identified through a functional analysis or review of the maladaptive target behaviors.

(d) A baseline measurement of the level of the target behavior before intervention.

(e) Reinforcement procedures which specify:

(i) the reinforcers to be employed;

(ii) the schedule for delivering the reinforcers;

(iii) a detailed description of the procedure for delivering the reinforcers;

(iv) the names of persons who will carry out these procedures.

(f) Deceleration procedures which specify:

(i) the name of the procedure which will be employed as a consequence for the maladaptive target behavior;

(ii) a detailed description of the procedure;

(iii) the names of persons who will carry out the procedure;

(iv) the name of the person who will supervise the implementation of the procedure;

(v) a limit on the use of any aversive procedure in one incident or time period.

(g) Data collection procedures which include:

(i) the kind of data which will be collected;

(ii) when the data will be taken;

(iii) who will collect the data;

(iv) who will review the data;

(v) at what point the person will graduate from the program;

(vi) data based criterion for modifying the program if the procedure is not effective;

(vii) graphs of the data;

(viii) data based criterion for terminating the procedure if it is not effective; and

(ix) a description of how data will be systematically shared and reviewed across program settings.

(24) "Maladaptive target behavior" means the inappropriate behavior the individual program plan is designed to control or eliminate.

(25) "Mechanical restraint" means physically restricting a person's movement through the use upon the person of any mechanical or restrictive device.

(26) "Modeling with positive reinforcement" means the reinforcement of a specified and appropriate behavior of one or more persons in order to induce a second person to imitate that appropriate behavior. The second person then receives reinforcers if that person displays the appropriate behavior.

(27) "Nonexclusionary time out" means that, following the occurrence of a maladaptive target behavior, a stimulus is introduced which indicates for the person that reinforcement will not occur for some specified period of time. The person remains in the activity, but does not receive reinforcers during the period of time that the stimulus is present.

(28) "Overcorrection" means a technique used to decrease a maladaptive target behavior. The two main types of overcorrection are restitutional overcorrection and positive practice overcorrection.

(29) "Physical restraint" means the restriction of a person's movement by one or more persons holding or applying physical pressure.

(30) "Positive practice overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to intensely practice appropriate alternative behavior.

(31) "Positive reinforcement" means specifically adding an event or stimulus following the occurrence of a target behavior that increases the probability of the behavior being maintained or occurring more frequently in the future.

(32) "Punishment" means specifically adding an event or stimulus following the occurrence of a target behavior that decreases the probability of the behavior being maintained or occurring more frequently in the future.

(33) "Required relaxation" means requiring a person to lie quietly for a period of time after the occurrence of a maladaptive target behavior.

(34) "Response cost" means a procedure reducing accumulated reinforcement upon the occurrence of a maladaptive target behavior, thus making the behavior less likely to occur.

(35) "Restitution" means a procedure used to decrease a maladaptive target behavior by directing a person to restore the person's environment. Variations include:



- (a) simple restoration; and
- (b) restorational overcorrection.

(36) "Restitutorial overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to restore the environment to its previous state and improve on the previous conditions.

(37) "Restriction of rights/privileges" means procedures which involve withdrawal, delay, or curtailment of rights or privileges which a person may ordinarily exercise. Such withdrawal is usually in connection with a program through which the person may exercise such rights and/or privileges by performing specified behaviors.

(38) "Satiation" means that a reinforcer loses its reinforcing effect due to the extent that it is continuously presented.

(39) "Seclusion time out" means a method of decreasing a maladaptive target behavior by requiring a person to leave an ongoing reinforcing activity and go to a closed room for a period of time. Seclusion time out is contingent on the occurrence of some previously specified maladaptive target behavior. The room to which the person must go must not be reinforcing in any manner.

(40) "Self-reinforcement" means a contingency established by a person to control that person's behavior through the delivery of reinforcement. The reinforcers remain under control of the person and the person is free to violate the contingencies at any time.

(41) "Simple restitution" means restoring the environment to the state that existed before a disruptive event occurred. Simple restitution does not include forced compliance by physically forcing a person to comply. Simple restitution should instead be accomplished by verbal and gestural cues, prompts or graduated guidance. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 05 through 07 reserved

**37. 34. 1408 AVERSIVE PROCEDURES: SYSTEMATIC PROGRAM REVIEW**

(1) Aversive procedures must be implemented by systematic program review.

(2) Systematic program review serves two functions. First, it ensures that any proposed aversive procedure is professionally justified. Second, it ensures that a person's right to be free from aversive, intrusive procedures is balanced against the person's interests in receiving services and treatment whenever a decision regarding the use of aversive procedures is made.

(3) In order for review functions to be adequately carried out, and at the same time ensure a responsive system, the generally accepted procedures for modifying maladaptive target behaviors are divided into the following three classifications:

(a) Nonaversive procedures;

(b) Level I aversive procedures; and

(c) Level II aversive procedures.

(4) Each classification consists of a list of procedures as well as a mechanism for review and approval. The classifications are ranked in order of restrictiveness. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1409 AVERSIVE PROCEDURES: APPROVAL CRITERIA**

(1) In general, the following criteria govern the approval of proposed programs incorporating aversive procedures:

(a) the proposed individual program plan must meet the minimum requirements specified in these rules;

(b) previous attempts to modify the maladaptive target behavior using less restrictive procedures have not proven to be effective, or the situation is so serious that a restrictive procedure is immediately warranted;

(c) the proposed procedure is a reasonable response to the person's maladaptive target behavior in that:

(i) there is evidence of the use of similar procedures in the current, relevant, published professional literature;

(ii) in general, the procedure is constructed in such a way as to be consistent with procedures of the same type as found in the current, relevant, published professional literature; and

(iii) the maladaptive target behavior is so serious that the person's interests in receiving services and treatment outweighs the right to the least restrictive training procedures and as a result the procedure is warranted. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1410 AVERSIVE PROCEDURES: CLASSIFICATION AND CONDITIONS GOVERNING USE OF PROCEDURES (1) Nonaversive procedures.

(a) Nonaversive procedures are appropriate for use during daily interactions and as such require no prior approval.

(b) Nonaversive procedures, when used to systematically address a specific inappropriate behavior, must be incorporated into an individual program plan (IPP) and must address an objective specified in the person's individual plan.

(c) Nonaversive procedures include:

- (i) schedule changes or antecedent stimulus modification;
- (ii) differential reinforcement of other behaviors;
- (iii) differential reinforcement of other behavior on a progressive schedule;
- (iv) differential reinforcement of incompatible behavior;
- (v) differential reinforcement of alternative behavior;
- (vi) differential reinforcement of low rate behavior;
- (vii) simple restitution where the client does not physically resist. The duration of the restitution may not exceed 20 minutes per day total in a 24 hour period from midnight to midnight;
- (viii) modeling with positive reinforcement; and
- (ix) self reinforcement.

(c) Nonaversive procedures must not pose substantial health risks to the client.

(2) Level I aversive procedures.

(a) Level I aversive procedures include:

- (i) contingent observation without restraint the duration of which does not exceed 20 minutes per episode or 60 minutes total in a 24 hour period from midnight to midnight.
- (ii) restriction of social activities;
- (iii) response cost;
- (iv) educational fines;
- (v) contingent use of personal spending money; and

- (vi) contingent use of personal possessions.
- (b) Level I aversive procedures may only be used:
  - (i) as part of a written IPP developed in accordance with the provisions of this subchapter;
  - (ii) with the approval by the person's individual planning team including a division representative; and
  - (iii) with the written consent of the person's parent, if the person is under 18 years of age, or the person's legal guardian, if one has been appointed by the court.
- (c) Level I aversive procedure approval is as stated in subsection (b) above.
- (3) Level II aversive procedures.
  - (a) Level II aversive procedures include:
    - (i) restitutional and positive practice overcorrection;
    - (ii) contingent exercise;
    - (iii) nonexclusionary time out;
    - (iv) exclusion time-out;
    - (v) seclusion time-out;
    - (vi) required relaxation;
    - (vii) contingent observation with restraint or with over 20 minutes duration each episode or 60 minutes total duration in a 24 hour period from midnight to midnight;
    - (viii) physical restraint;
    - (ix) mechanical restraint; and
    - (x) satiation.
  - (b) Level II aversive procedures are the most restrictive employed in the habilitation process and as such they may only be used:
    - (i) as part of a written IPP developed in accordance with the provisions of this chapter;
    - (ii) with the approval by the person's individual planning team including a division representative;
    - (iii) with the initial review and approval by the developmental disabilities program review committee (DDPRC);
    - (iv) with the ongoing review and approval by the regional manager; and
    - (v) with the written consent of the person's parent if the person is under 18 years of age, or the person's legal guardian, if one has been appointed by the court.
  - (c) The developmental disabilities program review committee (DDPRC) will respond in writing at its regularly scheduled meeting regarding requests for level II aversive procedures approval.
  - (d) The following information must accompany any request for level II aversive procedures approval in order to be considered:
    - (i) documentation of individual planning team approval of the procedure;

(ii) a copy of the proposed individual program plan which conforms to the requirements specified in these rules;

(iii) documentation of the failure of less restrictive procedures including data from previous individual program plans and a brief summary of each procedure that has been used. In the absence of such documentation, strong justification for the use of aversive or deprivation procedures and an explanation for the lack of documentation must be supplied;

(iv) written endorsement from a physician for any procedure which might affect the person's health; and

(v) written consent from the person's parent if the person is under 18 years of age, or the person's legal guardian, if one has been appointed by the court.

(e) The regional manager must review and approve or disapprove level II procedures on an ongoing basis in accordance with the provisions of the rules of this subchapter.

(f) The regional manager may request that the developmental disabilities program review committee (DDPRC) review a level II procedure, if a more thorough review may be warranted or if the level II procedure is changed significantly from the initial review by the developmental disabilities program review committee.

(History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 11 through 14 reserved

37. 34. 1415 AVERSIVE PROCEDURES: DEVELOPMENTAL DISABILITIES PROGRAM REVIEW COMMITTEE (1) The developmental disabilities program review committee (DDPRC) is a standing committee appointed by, and responsible to, the division administrator. The committee shall have representatives from at least the following three disciplines:

(a) legal - a person with a degree in jurisprudence from an accredited law school;

(b) advocacy/consumer - a trained advocate or the parent/guardian of a developmentally disabled person; and

(c) habilitation - a person with extensive education and experience in the use of the principles of applied behavior analysis in the habilitation of persons with developmental disabilities.

(2) The function of the DDPRC is to:

(a) provide for initial review and approval of proposed level II aversive procedures in accordance with the rules of this subchapter;

(b) either remand the ongoing review and approval of the approved procedure to the regional manager or retain the ongoing review and approval of the approved procedure;

(c) review a sample of the level II procedures that are the responsibility of the regional managers in order to provide feedback to the division administrator regarding the reliability and appropriateness of the ongoing level II procedure reviews and approvals; and

(d) annually review the ongoing review process for level II procedures in each of the regional offices and make recommendations to the administrator concerning the conduct of the level II procedure reviews and approvals by the regional offices;

(e) periodically complete ongoing data reviews and approvals of a sample of level II procedures in lieu of the regional manager in order to facilitate ongoing involvement of the DDPRC in programs the committee initially approved; and

(f) publish and update as needed guidelines for the use of aversive procedures.

(3) The DDPRC shall publish, maintain and disseminate the following information:

(a) a list of the current members of the DDPRC;

(b) a schedule of the routine time and place of meetings;

(c) the name and mailing address of a contact person for the committee;

(d) a set of descriptors which specifies guidelines for the minimum elements of each type of aversive procedure in level II. Each descriptor shall be based on a review of the professional literature and contain a justification for each element specified;

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- (e) a set of operating procedures for the committee;
  - (f) a set of reliability procedures for the review of a sample of the level II aversive procedures approved on an ongoing basis by each regional manager;
  - (g) guidelines for the periodic review of ongoing level II aversive procedures;
  - (h) a brief application form to accompany all requests for program review; and
  - (i) a description of the process for resolving appeals.
- (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 16 and 17 reserved

**37. 34. 1418 AVERSIVE PROCEDURES: RESTRICTION OF ANY CLIENT RIGHTS** (1) The following rights may not be restricted for the purposes of an aversive program:

- (a) the right to education and training services;
  - (b) the right to reside, work and receive treatment in a safe environment;
  - (c) the right to an individual plan;
  - (d) the right to prompt medical and dental care;
  - (e) the right to a nourishing, well-balanced diet;
  - (f) the right to acquire the assistance of an advocate;
  - (g) the right to the opportunity for religious worship; and
  - (h) the right to just compensation for work performed.
- (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1419 MEAL DELAY** (1) No meal may be delayed for a period greater than 1 hour from its scheduled starting time due to the implementation of an individual program plan. In no instance may a person miss a regularly scheduled meal as a result of the implementation of an individual program plan. (History: Sec. 53-20-204, MCA; Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1420 AVERSIVE PROCEDURES: EMERGENCY PROCEDURES**

(1) Emergencies are those situations for which no approved individual program plan exists and which if not dealt with may result in injury to the client or other persons or significant amounts of property destruction.

(2) If an emergency occurs the service provider may apply the following techniques as necessary to bring a person's behavior under control:

- (a) Physical restraint;
- (b) Exclusion time-out; or
- (c) Seclusion time-out in a room that conforms to the minimum requirements established by the developmental disabilities program review committee (DDPRC) and, that has been approved by the regional manager prior to use.



(3) All instances of the use of emergency procedures must be reported, in writing, to the regional manager within 48 hours. Such reports shall include at a minimum the time and date of the incident, the persons involved, the type and duration of the incident, a description of the cause(s) leading to it, any witnesses to the incident, the procedures employed, and other significant details. If an emergency procedure is used three times in a 6 month period, a written individual program plan must be developed. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1421 AVERSIVE PROCEDURES: REIMPOSITION OF DECELERATION PROGRAM (1) A deceleration program for a level I or II behavior may be reimposed upon the reoccurrence of the subject behavior if the following conditions are met:

(a) the behavior was the subject of a prior deceleration program;

(b) the behavior occurs within 6 months of graduation from the prior program;

(c) the prior program was at the time of graduation approved by the appropriate reviewing authority;

(d) the current staff administering and delivering the deceleration program are trained in the administration and delivery of the program;

(e) the deceleration program being reimposed is submitted within 48 hours to the appropriate reviewing authority for reapproval; and

(f) the deceleration program may be utilized only as an interim program, and once submitted to the appropriate reviewing authority, may only be continued in accordance with the direction of that authority. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 22 through 25 reserved

**37. 34. 1426 AVERSIVE PROCEDURES: APPEAL PROCESS**

(1) Any decision to approve or disapprove of a proposed level II procedure may be appealed by a member of the person's individual planning team.

(a) Upon receipt of an appeal notice, an administrative review of the matter will be conducted by the program services section supervisor for the division within 10 days of the receipt of the appeal from the DDPRC's or regional manager's decision. If the appellant remains dissatisfied after the administrative review, the matter may be appealed to the division administrator who will render a final administrative decision for the department within 45 days of the receipt of the appeal from the administrative review.

(b) The division administrator upon review of the committee's decision may request written arguments and other materials from the committee and the appellant. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 1427 AVERSIVE PROCEDURES: STAFF CERTIFICATION**

(1) Any provider employee who implements a level II aversive procedure must be able to carry out the procedure as it is written. A person's ability to implement a procedure must be documented in one of the following ways:

(a) A program staff person may observe each person in a role play situation in order to document their ability to implement the procedure as written.

(b) Supervisory personnel from the provider may provide documentation of employees' ability to implement a procedure if the following conditions are met:

(i) The supervisor's ability to implement the procedure has been documented by a program staff person.

(ii) The supervisor observes each employee in a role play situation and documents the employee's ability to implement the procedure; and

(iii) The corporation maintains a list of those employees who have been observed and are considered capable of implementing the procedure. The list should specify the dates that an employee demonstrated competency and the name of staff who certified the employee. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1428 AVERSIVE PROCEDURES: UNCLASSIFIED PROCEDURES

(1) Proposed aversive procedures which have not been classified will be reviewed by the developmental disabilities program review committee (DDPRC). The DDPRC will classify within 30 days of submittal the aversive procedure as either nonaversive, level I or level II for purpose of review in the future. (History: Sec. 53-2-201 and 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1986 MAR p. 345, Eff. 4/21/86; AMD, 1993 MAR p. 1356, Eff. 6/25/93; TRANS, from SRS, 1998 MAR p. 3124.)

## Subchapter 15

## Incident Reporting and Handling

37. 34. 1501 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) These rules govern the reporting and handling of incidents which harm or could result in harm to individuals with a developmental disability who are recipients of services funded by the developmental disabilities program of the department.

(a) Incidents constituting abuse and neglect of a child as defined in 41-3-102, MCA or abuse, neglect and exploitation of a person with a developmental disability as defined in 52-3-803, MCA are subject to the statutory and rule provisions governing the reporting, investigation and protection of those persons.

(b) The roles of the department in case management and protective services for persons with a developmental disability, abused and neglected children and abused, neglected and exploited older persons necessitate the provisions of these rules relating to those responsibilities.

(c) Incidents constituting abuse, neglect and exploitation of a person with a developmental disability are to be reported as provided for at 41-3-201 or 52-3-811, MCA, to the protective services programs of the department. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1502 INCIDENT REPORTING AND HANDLING, POLICY

(1) A contractor must have a policy of incident reporting and handling.

(2) An incident handling and reporting policy must assure that incident handling and reporting:

(a) is conducted as provided for in this rule;

(b) provides for the confidentiality of individual identity and information;

(c) meets any standards, if applicable, for group home licensing at ARM 11.18.199;

(d) meets any applicable program standards provided at ARM 37.34.1801, et seq.; and

(e) meets any applicable aversive procedure standards provided at ARM 37.34.1401, et seq.

- (3) An incident reporting and handling policy must provide:
- (a) for emergency procedures for contacting provider staff and others responsible for making any necessary decisions;
  - (b) guidance as to appropriate emergency procedures to be utilized;
  - (c) for the preservation of information or items that may be needed in reporting or investigating an incident; and
  - (d) for a system of tracking and discovering patterns of incidents.
- (4) The policy must provide staff training and orientation on a continuing and consistent basis regarding:
- (a) the statutory obligations at 41-3-201 and 52-3-811, MCA to report suspected or alleged abuse and neglect to the protective services programs of the department;
  - (b) the rules on incident reporting at ARM 37. 34. 1501, et seq. ;
  - (c) the rules on aversive procedures at ARM 37. 34. 1401, et seq;
  - (d) the contractor's policy on client abuse and rights violations;
  - (e) measures necessary to protect the rights and interests of individuals who are considered to be "at risk"; and
  - (f) the department procedures for investigating suspected abuse and neglect in services funded by the program. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

37. 34. 1506 INCIDENT REPORTING AND HANDLING (1) An incident involving a recipient of developmental disabilities services must be reported in writing and submitted in the format requested by the department to the case manager and to a field services specialist on the first working day following the incident.

(2) An incident report must minimally include the individual's name and address, the time and date of the incident, a description of the incident, the names of staff and other persons present and responding to the incident, and the response of the staff and others to the incident.

(3) Any suspected abuse and neglect of a child or suspected abuse, neglect and exploitation of a person with a developmental disability must be reported, in accordance with 41-3-201 and 52-3-811, MCA and implementing rules, to the protective services worker or designee and the county attorney. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1507 INCIDENT REPORTING AND HANDLING, DEATH, SUICIDE ATTEMPT, UNACCOUNTED FOR ABSENCE, EMERGENCY HOSPITALIZATION OR LAW ENFORCEMENT INVOLVEMENT (1) The contractor must notify the following persons upon an individual's death, suicide attempt, unaccounted for absence, emergency hospitalization; substantial changes in an individual's residential or vocational placement without IP team approval; or alleged unlawful activities by or affecting the individual, including, but not limited to incarceration of an individual:

- (a) the case manager or designee;
- (b) the field services specialist;
- (c) the guardian, if any;
- (d) a designated advocate, if any; and
- (e) the next of kin, if any.

(2) Notice must be given, verbally, as follows:

(a) to the guardian or next of kin, if any, and case manager or their designees as soon as possible but no later than 2 hours after the incident becomes known; and

(b) to the field services specialist and an advocate within 24 hours of the incident. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 08 through 10 reserved

37. 34. 1511                    INCIDENT      REPORTING      AND      HANDLING.  
INVESTIGATIONS (1) The department may conduct an investigation into any incident, reported or unreported, which involves or appears to involve an individual receiving developmental disabilities services.

(2) The contractor must provide the department with access to the site and facilities relating to the incident and to any staff who may have knowledge of the matter.

(3) An incident involving suspected abuse and neglect of a child or suspected abuse, neglect and exploitation of a person with developmental disabilities must be investigated by the department under the statutory and rule provisions governing those investigations. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 1512                    INCIDENT      REPORTING      AND      HANDLING.  
CONFIDENTIALITY (1) Incident reports and investigations are confidential.

(2) An incident report is available to the department, the contractor and providers of necessary professional services for use relating to their responsibilities for the care and protection of the individual and the provision of services to the individual.

(3) An incident report or information contained therein may be made available to other governmental entities if those entities are responsible for the care and protection of the individual or the provision of services to the individual and the receipt of the incident report or information is necessary to the conduct of those responsibilities.

(4) Information in an incident report concerning an individual is available to the individual, to a legal guardian or legally responsible family member of the individual, or to an advocate designated by the individual or legal guardian or legally responsible family member. Information, however, need not be provided to a person who is an alleged or suspected perpetrator.

(5) An incident of abuse and neglect involving a child is subject to the confidentiality provisions of 41-3-205, MCA. An incident of abuse, neglect and exploitation involving a person with a developmental disability is subject to the confidentiality provisions of 52-35-813, MCA. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37.34.1513 INCIDENT REPORTING AND HANDLING, CLIENT ABUSE OR CLIENT PROBLEM BEHAVIOR** (1) In a situation where the provisions of either 41-3-101, MCA et seq., relating to child abuse and neglect or 52-3-801, MCA et seq., relating to abuse, neglect or exploitation of a person with a developmental disability are determined to be applicable, the requirements of these rules may be followed only to the extent that they are not in conflict with the provisions of those laws and rules adopted to effectuate those laws.

(2) Problem behaviors of individuals resulting in either harm to self, others or property or the threat of harm to self, others or property are subject to the reporting requirements in ARM 37.34.1506. If staff must use emergency aversive procedures, as defined and provided in ARM 37.34.1401, et seq., for modification of those behaviors, they must be handled in accord with the aversive procedures in those rules at ARM 37.34.1401, et seq. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1988 MAR p. 1895, Eff. 8/26/88; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)



## Subchapter 16

## Regional Councils

**37.34.1601 REGIONAL COUNCILS** (1) The director of the department shall recognize a petition by a citizens' organization for a developmental disabilities regional council under the procedures set forth herein. The petition shall be signed by a majority of the proposed members and shall provide:

- (a) that the proposed council has not more than 20 members;
- (b) the names and addresses of each proposed council member;
- (c) that the citizens' organization is broadly representative of the region and at least 1/3 of the council's members are consumers or representative of consumers or consumer organizations in the discipline of developmental disabilities;
- (d) that no proposed members are employees of the department of public health and human services or employees of a provider service program funded wholly or in part through the developmental disabilities program;
- (e) that the citizens' organization held at least 3 public meetings in different areas of the region and that the public was encouraged to attend and participate in the formation of a regional council;
- (f) that the public was given adequate notice of the meetings by means of local news media such as radio, newspapers and television throughout the region;
- (g) that the organization has compiled by-laws for the proposed council; and
- (h) that a recognized regional council for developmental disabilities does not exist for that region.

(2) A citizens' organization shall submit its petition to the director, Department of Public Health and Human Services, 111 N. Sanders, P. O. Box 4210, Helena, MT 59604-4210. The director shall notify the citizens' organization, in writing, no later than 30 days after receipt of the petition whether the citizens' organization is approved as a regional council for developmental disabilities.

(3) Citizens' organizations approved by the department as regional councils prior to December 1, 1979, shall be treated as if approved in accordance with the provisions of this section.

(4) Regional councils shall file with the director of the department current copies of council by-laws and council membership lists no later than October 1 of each year. The council membership list shall include sufficient information about council members to verify that the council is constituted in accordance with the laws of the state and this chapter provided, however, that any person who is a member of a regional council on January 1, 1980, may complete his or her term. Notice of approval or non-approval of by-laws and membership will be sent by the director no later than November 1. Any regional council not in compliance with the provisions of this chapter will be provided a period of time, as determined by the director, which will be no less than 30 days to correct such situation.

(5) Regional council by-laws. A regional council shall adopt by-laws which shall set forth:

- (a) a stated purpose;
- (b) the council duties, consistent with law;
- (c) that membership on the council, except for vacancies occurring for any reason during a member's term, will be determined by election held at a public meeting which has been advertised in the news media throughout the region for a set number of days, and for which a set number of day's notice has been given; and which persons present are eligible to vote in such elections;
- (d) that no members are employees of the department or employees of a provider service program funded wholly or in part through the developmental disabilities program;
- (e) provisions which:
  - (i) identify potential conflict of interest situations for council members;
  - (ii) detail the manner in which such conflicts will be handled, which provisions must, at a minimum, restrict a member from evaluating a service program in which the member has a direct interest or voting on any matter, the outcome of which will directly affect a member's interest; and
  - (iii) provide for the monitoring of such conflict of interest provisions.
- (f) provisions governing terms for members;
- (g) provisions for filling vacancies created on the council during members' regular terms;
- (h) provisions for electing officers for the council, for terms of office for officers, and for the filling of vacancies created during terms of office;

(i) that a quorum shall be at least a majority of the voting membership of the council, including alternates present to represent absent members;

(j) that the council will conduct regular meetings at least once during each calendar quarter, that records shall be kept of activities of the council and the means by which the public has access to the records;

(k) that if a committee is created, the purpose and function of that committee; and

(l) provisions for amending the by-laws.

(6) Regional councils shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region;

(b) make an annual written review and evaluation of needs within the region, including a list of priorities according to the findings of the review, and provide a copy of the review to the department and the developmental disabilities planning and advisory council by December 1 of each year;

(c) develop an annual plan for a system of community-based services for the developmentally disabled within the region and provide a copy of the plan to the department and the planning and advisory council by March 1 of each year preceding the federal fiscal year to which the plan applies;

(d) make an annual written review and evaluation of services presently provided within the region and provide a copy of the evaluation to the department and the planning and advisory council by May 1 of each year;

(e) provide two names for regional representatives to the planning and advisory council as requested by the council; and

(f) inform the department of changes in officers, members and alternates of the regional council, or of changes in the by-laws.

(7) The department shall employ a regional supervisor for each region to provide technical and administrative assistance to the regional council in:

(a) preparing a review and evaluation of needs and services;

(b) advising the department on programs for services;

(c) developing a plan for the developmentally disabled within the region, and to provide such additional assistance as may be assigned by the division administrator. (History: Sec. 53-20-207, MCA; IMP, Sec. 53-20-203 and 53-20-207, MCA; NEW, 1979 MAR p. 1721, Eff. 12/28/79; TRANS, from SRS, 1998 MAR p. 3124.)

## Subchapter 17

## Planning and Advisory Councils

**37. 34. 1701 PREPARATION OF MONTANA DEVELOPMENTAL DISABILITIES STATE PLAN** (1) The department and the developmental disabilities planning and advisory council shall jointly prepare an annual comprehensive state plan for the initiation and maintenance of developmental disabilities services in the state.

(2) No later than March 30 preceding the federal fiscal year to which the state plan applies, the planning and advisory council will provide to the department information gathered from advisory organizations and other public and private agencies relative to the following matters:

(a) state goals and objectives for developmental disabilities services;

(b) service needs and service gaps;

(c) service priorities; and

(d) interagency responsibilities for service delivery.

(3) The state plan must be approved by the council and by the director of the department. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-206, MCA; NEW, 1979 MAR p. 1712, Eff. 12/28/79; TRANS, from SRS, 1998 MAR p. 3124.)

## Subchapter 18

## Minimum Standards

**37. 34. 1801 ACCREDITATION STANDARDS FOR PROVIDER PROGRAMS OF SERVICES: ADOPTION AND APPLICABILITY** (1) The department hereby adopts standards to assure the quality of provider programs of community-based services for persons with developmental disabilities funded by the department. Programs of community-based developmental disabilities services funded by the department must be accredited in accordance with this rule.

(2) The department hereby adopts and incorporates by reference as the standards for the provision of programs of community-based developmental disabilities services by providers, the respective sets of accreditation standards published and applied by the council on quality and leadership in support for people with developmental disabilities (the council), published in 1997, and by CARF...the rehabilitation accreditation commission (CARF), published in January 2000. These sets of accreditation standards set forth standards of performance and quality for provider programs of community-based services for persons with developmental disabilities. A copy of both the the council and CARF service standards may be obtained on temporary loan from the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The council standards may be purchased from The Council, 100 West Road, Towson, MD 21204. A copy of the CARF standards may be obtained from CARF, 4891 East Grant Road, Tucson, AZ 85712.

(3) Each provider program of community-based developmental disabilities services funded by the department must shall be accredited by either the council or CARF.

(4) The department may permit an entity to deliver developmental disabilities services without being accredited in accordance with the specific sets of standards adopted in (3), if the department determines that the entity is otherwise accountable to a set of standards of a recognized accrediting organization, that the standards are applicable to the delivery of the particular developmental disabilities services to be provided by the entity and that the standards are appropriate for the purposes of this rule.

(5) The programs of services offered by a new provider must receive accreditation within the initial 2 years of existence.

(6) A new service program offered by an existing provider must receive accreditation during the next regular accreditation cycle for the provider.

(7) If a provider loses or fails to maintain accreditation for the provider's programs of services the developmental disabilities program may only continue to contract with the provider for the programs of services for no more than 2 years.

(8) New programs of services provided by a new provider or by an existing provider and the programs of services provided by an existing provider that has lost or failed to maintain accreditation must generally be determined by the developmental disabilities program to be in conformance with one of the sets of standards adopted in this rule.

(a) The provider must submit to the developmental disabilities program adequate information concerning the programs of services to establish that they are generally in conformance with one of the sets of accreditation standards.

(9) A provider must provide to the developmental disabilities program, either directly or by arrangement with the accreditation organization, all survey and accreditation reports.

(10) The following programs of services do not need to be accredited as provided for in this rule:

(a) the provision of transportation by a provider licensed by the public service commission;

(b) fiscal intermediary services;

(c) the provision of services to no more than two persons;

(d) the provision of licensed, professional services by one of the following:

(i) audiologist;

(ii) speech/language pathologist;

(iii) physical therapist;

(iv) occupational therapist;

(v) psychiatrist;

(vi) psychologist;

(vii) family therapist;

(viii) licensed clinical professional counselor;

(ix) registered nurse;

(x) licensed practical nurse;

(xi) registered dietitian;

(xii) licensed nutritionist;

(xiii) physician;

(xiv) pediatrician;

(xv) social worker;

(xvi) orientation/mobility training specialist;

(xvii) special education teacher;

(xviii) school psychologist;

(xix) adaptive physical education teacher; or

(xx) special education supervisor.

(e) construction, maintenance, repair, sales services and equipment and supplies inclusive of any required tangible services that are new or used, and can be purchased from a contractor or vendor that meets the most appropriate performance standards;

(f) services which are not covered by either the council or CARF accreditation standards; or

(g) temporary or short term services that are of no more than 4 months duration per year. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1985 MAR p. 1156, Eff. 8/16/85; AMD, 1990 MAR p. 1851, Eff. 9/28/90; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 3171, Eff. 11/10/00.)

**37. 34. 1802 ACCREDITATION STANDARDS FOR PROVIDER PROGRAMS OF SERVICES: DEPARTMENT ASSISTANCE** (1) The department for purposes of administering accreditation standards:

(a) maintains copies of all provider survey and accreditation reports;

(b) provides to a provider such technical assistance as the department may offer and the provider requests; and

(c) provides information to the regional councils and the developmental disabilities state planning and advisory council, as requested, about the status of each provider in relation to the survey and accreditation process. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-203 and 53-20-205, MCA; NEW, 1985 MAR p. 1156, Eff. 8/16/85, AMD, 1990 MAR p. 1851, Eff. 9/28/90; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 3171, Eff. 11/10/00.)

Subchapters 19 and 20 reserved



## Subchapter 21

## Staffing

**37.34.2101 STAFFING: APPLICABILITY** (1) Contractors must employ staff who are able to demonstrate the ability to meet the needs of the persons that the contractors serve.

(2) All contractors of services, except contractors providing transportation services that are also available to the general public and contracting with the department to provide only transportation services, are subject to these rules. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37.34.2102 STAFFING: STAFF COMPETENCIES GENERALLY**

(1) A contractor must have a written job description and listing of competencies for each staff position.

(2) A contractor must conduct a thorough screening and a background check of all persons prior to employment with the corporation. A thorough screening and background check must include, but is not limited to, a criminal background check through the Montana department of justice.

(3) A contractor must verify that each staff member meets the competencies to perform the tasks and responsibilities of their position. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

37. 34. 2106 STAFFING: STAFF COMPETENCIES FOR FAMILY EDUCATION AND SUPPORT SERVICES (1) Contractors providing family education and support services, must comply with the staff competency requirements of this rule.

(2) A family support specialist, an intake specialist or an intensive support coordinator must meet family support specialist certification requirements. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

37. 34. 2107 STAFFING: STAFF COMPETENCIES FOR COMMUNITY HOME, INTENSIVE COMMUNITY HOME, SUPPORTED LIVING, WORK OR DAY SERVICES (1) Contractors providing community home, supported living or work or day services must comply with the staff competencies requirements of this rule.

(2) Each staff person must demonstrate the competencies necessary to meet the needs of the persons receiving services from the staff person.

(3) The rules, policies and procedures that staff must demonstrate competency in include, but are not limited to, the following:

- (a) health and safety;
- (b) individual rights;
- (c) systems reporting procedures;
- (d) abuse, neglect and exploitation;
- (e) application of treatment and training techniques; and
- (f) behavior management techniques.

(4) For intensive community home and intensive work or day services, each staff person must be enrolled in the developmental disabilities client programming technician (DDCPT) curriculum or its equivalent within 45 working days of employment if competency within the areas covered by such curriculum, has not previously been demonstrated.

(5) For supported living services, each supported living coordinator must demonstrate the competencies specified in ARM 37. 34. 986 within the first 6 months of employment. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 08 through 10 reserved

37. 34. 2111 STAFFING: CONTRACTOR STAFFING FOR SERVICES

(1) All contractors must comply with the staffing requirements of this rule.

(2) The contractor must maintain minimum staffing ratios in each program of service, as specified for each program in the contract.

(3) The contractor must ensure the presence of awake night staff in applicable programs, when specified in the contract.

(4) The contractor must provide for emergency, back-up staff in applicable programs, when specified in the contract.

(5) Procedures for supervision of staff including day, evening, night and weekend staff must be maintained, implemented and documented in applicable programs, when specified in the contract.

(a) Supervision of staff must include the provision of guidance and direction to on-line staff in a sufficient and reasonable manner to ensure that the individuals served receive appropriate, quality care and treatment. Supervision of staff can include having a supervisor on call or available to provide assistance to on-line staff on an as needed basis. Some periodic and unscheduled on site visits should be utilized as a means of ensuring and maintaining appropriate staff behavior. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2112 STAFFING: CONTRACTOR STAFFING FOR SUPPORTED LIVING SERVICES** (1) A contractor for supported living services must maintain the level of supervision available in each supported living opportunity or group of opportunities, as specified in the contract.

(2) Level of supervision requirements are specified in the contract unless all direct services funds are included in resource and support wrap-around services.

(3) Level of supervision requirements specified in the contract must include:

(a) the number of hours per 24-hour period that direct, onsite, awake staff supervision is available;

(b) the number of hours per 24-hour period that on-call supervision is available with a description of the type of on-call system, inclusive of the response time;

(c) the availability of staff supervision at night with a description of the type of supervision, inclusive of response time; and

(d) the direct-care staff ratios provided during each 24-hour period for each day of the week. (History: Sec. 53-20-204, MCA; IMP, Sec. 53-20-205, MCA; NEW, 1995 MAR p. 1136, Eff. 6/30/95; TRANS, from SRS, 1998 MAR p. 3124.)

Subchapter 22 reserved

## Subchapter 23

## Certification of Professional Persons

**37. 34. 2301 RESIDENTIAL FACILITY SCREENING: PURPOSE**

(1) These rules govern the screening of persons being considered for commitment into residential facilities. The rules provide the procedures and criteria for determining whether a person is seriously developmentally disabled. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-102, 53-20-106, 53-20-112, 53-20-116, 53-20-121, 53-20-125, 53-20-127, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2302 RESIDENTIAL FACILITY SCREENING: DEFINITIONS**

For the purposes of this rule the following definitions apply:

(1) "Applicant" means a person seeking certification as a developmental disabilities professional.

(2) "Certification committee" means, as provided in ARM 37.37.2317, the committee with delegated authority to certify developmental disabilities professionals.

(3) "Community-based facilities" or "community-based services" means those services and facilities which are available for the habilitation of persons with developmental disabilities in a community setting.

(4) "Court" means a district court of the state of Montana.

(5) "Department" means the department of public health and human services (DPHHS).

(6) "Developmental disability" means a disability as defined at 53-20-103(5), MCA.

(7) "Developmental disabilities professional" means a professional as defined at 53-20-102(4), MCA.

(8) "Individual treatment planning team (ITP)" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

(9) "Qualified mental retardation professional (QMRP)" means a professional program staff person for the residential facility whom the department determines meets the professional requirements necessary for federal certification of the facility.

(10) "Residential facility" means the Montana developmental center (MDC) or the eastmont human services center (EHSC).

(11) "Residential facility screening team" means the team provided in ARM 37.34.2306.

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(12) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) has behaviors that pose an imminent risk of serious harm to self or others, or self-help deficits so severe as to require total care or near total care and, who, because of those behaviors or deficits, cannot safely and effectively be habilitated in community-based services. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-102, 53-20-106, 53-20-112, 53-20-116, 53-20-121, 53-20-125, 53-20-127, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 03 through 05 reserved

**37. 34. 2306 RESIDENTIAL FACILITY SCREENING: ADMINISTRATION AND COMPOSITION OF SCREENING TEAM** (1) The residential facility screening team is a standing committee.

(2) The residential facility screening team includes the following representatives who are appointed by the director of the department:

(a) a representative from the Montana developmental center;

(b) a representative from the developmental disabilities program;

(c) a representative from an adult services provider agency within the developmental disabilities service system; and

(d) a person representing consumer interests.

(3) The representative from the developmental disabilities program serves as chairperson of the team.

(4) The residential facility screening team, as necessary, obtains information and evaluations from the following persons:

(a) for review of commitments to the Montana developmental center or to the eastmont human services center, a QMRP; and

(b) for individuals residing in communities, a developmental disabilities professional.

(5) In a district court hearing for commitment, a member of the residential facility screening team may be required to testify with regard to a determination made by the residential facility screening team.

(6) A person serving on the residential facility screening team shall not participate in a determination where that person has a personal conflict. In such circumstances an alternate member is selected to serve. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2307 RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF DEVELOPMENTAL DISABILITIES PROFESSIONALS AND QMRP'S** (1) The developmental disabilities professional or QMRP reviewing an individual being considered for commitment or recommitment is responsible for:

(a) gathering and analyzing information about the person;

(b) conducting psychological testing and assessment when requested by the residential facility screening team or the individual's case manager; and

(c) compiling information and writing reports for the residential facility screening team.

(2) The developmental disabilities professionals, or QMRP's at the residential facilities will:

(a) when a recommitment is uncontested, base their reports on individual treatment plan (ITP) information; or

(b) when emergency admissions are being considered for commitment, provide any available relevant information to the residential facility screening team. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-112, 53-20-116, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2308 RESIDENTIAL FACILITY SCREENING: RESPONSIBILITIES OF THE SCREENING TEAM** (1) The function of the residential facility screening team is to:

(a) review information about individuals for whom commitment or recommitment to a residential facility is sought; and

(b) provide a determination regarding any commitment or recommitment. If commitment or recommitment is recommended, the team provides that recommendation to the court along with the information considered in making the determination.

(2) The residential facility screening team initiates a review upon notification that a petition has been filed in court for commitment or recommitment of an individual into a residential facility.

(3) The residential facility screening team publishes, maintains and disseminates the following information:

(a) a list of the current members of the team;

(b) the name and mailing address of a contact person for the committee;

(c) a handbook describing the operating procedures for the team and guidelines the team uses in making its decisions, and how non-consensus is handled;

(d) identification or development of standardized forms to be used for commitment;

(e) specific timelines for response to a court after notification of the filing of a petition.



(4) In addition to giving notice of its determination to the court, notice of a team determination is mailed or delivered by the screening team to the individual who is being considered for commitment, to the parents or guardian, the responsible person, the next of kin, the attorney for the individual, the advocate for the individual, the county attorney, the residential facility and the attorney for the parents or guardian. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-125, 53-20-127, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2309 RESIDENTIAL FACILITY SCREENING: DETERMINATION OF SCREENING TEAM** (1) The residential facility screening team, as provided in 53-20-125 and 53-20-133, MCA, determines whether the individual is seriously developmentally disabled and, therefore, may be considered for commitment or recommitment to a residential facility.

(2) The residential facility screening is conducted as follows:

(a) when a petition is made to the district court requesting a commitment or recommitment to a residential facility, the district court refers the case to the residential facility screening team for a determination;

(b) the residential facility screening team completes the assessment process to determine whether the individual meets the definition of seriously developmentally disabled;

(i) if the residential facility screening team determines that the individual meets the definition of seriously developmentally disabled and, therefore, determines that commitment or recommitment to a residential facility is appropriate, the team may recommend to the court that the individual be committed, if the team determines that commitment is appropriate in that particular case; or

(ii) if the team does not find that the individual meets the definition of seriously developmentally disabled, the person may not be committed by the court.

(c) the team reports its determination to the court.

(3) The residential facility screening team, in making a determination, reviews the following:

(a) a comprehensive psychological evaluation that includes adaptive and maladaptive behavior;

(b) diagnosis;

(c) social history;

(d) current status or situation;

(e) comprehensive medical history including medications history;

(f) current and recommended treatment plan;

(g) narrative of current problems and attempted solutions;

(h) ancillary service reports available or obtained as needed;

(i) contact names for involved parties; and

(j) legal status.

(4) The information to be reviewed by the residential facility screening team may be obtained from a case manager, family members, an advocate, or others.

(5) A decision by the residential facility screening team to recommend commitment or recommitment must be by consensus of all the team members. If the team does not reach consensus, the team cannot recommend commitment or recommitment.

(6) The screening process is initiated when a notice of a properly filed petition has been sent to the residential facility screening team within the required time.

(7) If an individual has been placed by an emergency admission into a residential facility and a petition is not filed within the required timelines, the individual may be returned to the county of origin, in accordance with the residential facility's procedures. If, under these circumstances, the party who brought the individual to the residential facility does not come to get the person within 48 hours, residential facility staff may return the individual to the county of origin, in accordance with the residential facility's procedures. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-125, 53-20-127, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

Rules 10 through 12 reserved

**37. 34. 2313 RESIDENTIAL FACILITY SCREENING: APPEAL OF SCREENING TEAM DETERMINATION OR RECOMMENDATION** (1) If the residential facility screening team determines that the individual is not seriously developmentally disabled and therefore a commitment or recommitment is not appropriate, the individual or the individual's authorized representative aggrieved by the determination may request a fair hearing as provided in ARM 37. 5. 304, 37. 5. 305, 37. 5. 307, 37. 5. 310, 37. 5. 311, 37. 5. 313, 37. 5. 316, 37. 5. 318, 37. 5. 322, 37. 5. 325, 37. 5. 328, 37. 5. 331, 37. 5. 334 and 37. 5. 337, from the department, within 30 days of the determination that the individual is not seriously developmentally disabled.

(2) If the residential facility screening team recommends commitment or recommitment, the recommendation goes to the district court, and the parties can request a hearing from the court, as provided in 53-20-125, MCA. (History: Sec. 53-20-133, MCA; IMP, Sec. 53-20-125, 53-20-127, 53-20-128, 53-20-129 and 53-20-133, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 14 and 15 reserved

**37. 34. 2316 RESIDENTIAL FACILITY SCREENING: CERTIFICATION OF DEVELOPMENTAL DISABILITIES PROFESSIONALS**

(1) Developmental disabilities professionals are certified for the following purposes:

(a) to recommend, when requested by a party to a commitment proceeding to the district court or by the district court, the most appropriate habilitation plan or treatment plan for an individual for whom commitment or recommitment is being sought;

(b) to evaluate at the request of the residential facility screening team, as provided in ARM 37. 34. 2307 and 37. 34. 2309, an individual being considered for commitment or recommitment, by gathering information, conducting, as directed by the residential facility screening team or as requested by the individual's case manager, psychological testing and assessment, compiling information, writing reports to the residential facility screening team, and providing a report to the residential facility screening team to assist in the team's review of the case regarding commitment. (History: Sec. 53-20-106 and 53-20-133, MCA; IMP, Sec. 53-20-106, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2317 RESIDENTIAL FACILITY SCREENING: THE CERTIFICATION COMMITTEE FOR DEVELOPMENT DISABILITIES PROFESSIONALS**

(1) Developmental disabilities professionals are certified by the certification committee for developmental disabilities professionals.

(2) The purposes of the certification committee are to:

(a) review all applications of persons requesting certification as developmental disabilities professionals;

(b) certify developmental disabilities professionals in accordance with these rules; and

(c) perform other duties set forth by these rules or assigned to the certification committee by the director of the department.

(3) The certification committee for developmental disabilities professionals includes the following members:

(a) a person appointed by the governor;

(b) four persons appointed by the director of the department, at least two of whom represent the developmental disabilities program and, who are familiar with the roles and responsibilities of developmental disabilities professionals.

(4) Members of the certification committee shall serve at the convenience of the appointing authority.

(5) The person appointed by the governor serves as chairperson of the committee. Meetings of the certification committee shall be called by the chairperson. The certification committee meets as needed, but no fewer than 4 times per year, to review applicants. (History: Sec. 53-20-106 and 53-20-133, MCA; IMP, Sec. 53-20-106, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2318 RESIDENTIAL FACILITY SCREENING: CERTIFICATION PROCEDURES FOR DEVELOPMENTAL DISABILITIES PROFESSIONALS** (1) The certification procedures for a professional person are the following:

- (a) submission of application forms by the applicant;
  - (b) a review by the certification committee, within 90 days of receipt of all required application materials, to determine the qualifications of the applicant for certification;
  - (c) an issuance or denial of certification or provisional certification of the application by the certification committee;
    - (i) the certification committee may issue provisional certification that limits the specific services, the conditions under which the developmental disabilities professional can provide services, or the time period such certification shall be effective, or any combination thereof;
  - (d) notification to the applicant within 30 days of the committee's determination.
- (2) Certification expires 3 years from the date of certification.
- (3) The certification committee may revoke certification for cause by notifying the certified developmental disabilities professional in writing of the reasons for revocation at least 10 days prior to the effective date of revocation.
- (4) The certification committee establishes and implements procedures to assure timely and efficient review of applicants. (History: Sec. 53-20-106 and 53-20-133, MCA; IMP, Sec. 53-20-106, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2319 RESIDENTIAL FACILITY SCREENING: QUALIFICATIONS OF DEVELOPMENTAL DISABILITIES PROFESSIONALS** (1) A developmental disabilities professional must be:

- (a) a licensed psychologist;
- (b) a licensed psychiatrist; or
- (c) a person with a master's degree in psychology, who:
  - (i) has training and experience in psychometric testing and evaluation; and
  - (ii) has experience in the field of developmental disabilities.

(2) Experience in the field of developmental disabilities may include:

- (a) evaluation;
- (b) planning;
- (c) testing;
- (d) treatment; and
- (e) consultation.

(3) Applicants must supply transcripts and other appropriate records that document relevant training and experience.

(4) The certification committee retains the right to determine the appropriateness of any experience for certification purposes. (History: Sec. 53-20-106 and 53-20-133, MCA; IMP, Sec. 53-20-106, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

**37. 34. 2320 RESIDENTIAL FACILITY SCREENING: RIGHT TO APPEAL CERTIFICATION COMMITTEE DECISIONS** (1) Any action of the certification committee concerning certification denial or revocation may be appealed to the department.

(a) The notice of appeal shall be directed to the director of the department.

(b) The appeal shall be in writing and shall set forth the nature of the grievance and arguments supporting the grievance and actions desired. The appealing party may also present oral argument.

(c) The appealing party shall be notified in writing 10 days prior to the hearing. The written notice shall contain the date, time and location of the hearing.

(2) All findings of the department director or designee are binding on the certification committee. (History: Sec. 53-20-106 and 53-20-133, MCA; IMP, Sec. 53-20-106, MCA; NEW, 1991 MAR p. 1849, Eff. 10/1/91; AMD, 1996 MAR p. 2188, Eff. 8/9/96; TRANS, from SRS, 1998 MAR p. 3124.)

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